1947 **File No.** O Def of 9 47

Legal **DEPARTMENT**
"A" **BRANCH**

Subject:—

Opinions under the Defence of India Act; 1939, and under Rules made there under

E 1-90

File No: O Def of 9/47

Std. Sectt. Slip 24 E.

17-A

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P.T.O.

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Mjr/17/5

5 C.

Defence of India Rules, 1939.
Release of --- requisitioned under.

Government of Bombay,
Revenue Department,
Circular No. S. 123/1/4959/B,
Bombay Castle, 24th December 1946.

C I R C U L A R

In modification of orders issued in Government Letters No.S.123/1/18157/-B,S-123/30489(a)-B,S.123/1/32891, dated 13th August, 11th September and 23rd October 1946 respectively, Government is pleased to direct that since the decision whether a property can be given up or not is reserved for the Area Headquarters, Government has decided to take up individual case with the Headquarters, Bombay Area. Collectors are therefore requested to report to Government individual cases of the requisitioned properties which are lying unused or are prima facie not fully utilised and could in their opinion be released. Other cases which Collectors feel could usefully be taken up shouldalso be reported to Government. While forwarding their reports to Government Collectors should give full particulars of the properties 'Location area; whether residential or otherwise whether agricultural or non-agricultural; the No. and date of the requisition order or orders under which it was requisitioned; the period for which it has been lying vacant or not fully utilised etc;,)

2. It has been brought to the notice of Government that certain Collectors have derequisitioned properties on receipt of Administrative orders from the Defence Authorities declaring properties as surplus. Collectors are informed that when a property is declared surplus administrative orders for its disposal are issued to the L.H.&D service either by the local Area authorities or higher authorities, depending on the value of the property concerned. Copies of these administrative orders are endorsed to the Collectors only for their advance information. The responsibility for disposal lies with L.H.&.D service. Collectors are therefore fequested not to issue

P.T.O.

issue derequisition orders until requested to do so by the L.H.&D. Services The Collectors are further informed that in cases where the Defence Department has created substantial assets, the previous sanction of Government ~~if~~ to the derequisitioning should be obtained so that Government if interested may negotiate for their purchase, In other cases the Collectors should derequisition the property immediately on receipt of intimation from the L.H.& D. Services .

By order of the Governor of Bombay

J.B. Bhowman)

Deputy Secretary to the Government of Bombay

Revenue Department

G.C. No.S. 123/1/4959-B, R.D. dated 24th December 1946

To.

The Commissioners of Divisions,

All Collectors,

All Departments of the Secretariate (except the Separate Department

No. of 1946

Copy forwarded for information and guidance to:-

Mjr/10/5/

4 C.

Submitted with reference to the C. fo R. 's office note at p.9. ante

2. It appears that some requisitioned premises were allotted to one Consumers Co-operative Society Ltd., Ahmedabad for running a ration shop. As the authorization and the license of the said Society have since been cancelled by the Rationing Authorities, the premises are to be handed over to some other Society. The present occupants are however refusing to hand over the possession of the premises to the Collector who has now requested Government as to what further action should be taken in the matter. The C. of R's office has suggested that the proper course in this case would be to file a Civil suit for eviction against the present occupants. Beofre the D.M. Ahmedabad is informed accordingly, the R.L.A. is requested to advise.

3. As pointed out in R.L.A's opinions Nos. 1363, dated the 18-2-1946 and 6255, dated 20-11-1946, the proper course in the present case would be t. file a Civil Suit for ejectment. The view taken in the C. fo R's office note at p.9 ante, appears to be correct. These papers may therefore be seen and returned to the C. of R's office.

Id/31/12

A.L.R. Reply may be:-

Seen and returned

The view taken in para 2 of the C. of R's office note at p. 9 ante is correct.

Sd/- 2/1

R.L.A.

Sd/-
L.V. Vyas 9/1

U.R. to the Office of the C. of R. No. 130 dated 6-1-1947

Mjr/10/5

4 C.

L.D. R.T. No. 11762 23.12.1946

Submitted with reference to the P. and S.D. office note at p.1. ante.

2. Following a strike by the employees of the I.C.I. (India) Ltd., Bombay, over certain demands made by them, Govt. referred the disputes for adjudication under rule 81-A of the Defence of India Rules by G.E, P, and S.D., Nos 544/46 and 544/46-I dated 9-11-1946. The employees, who resumed work on 12-11-1946, are now demanding wages for the period of strike and that there should be no victimisation of the employees who had gone on strike. In this connection, it has been stated in para 2 of the P. & S.D. office note at p.1 ante that these new demands could not be included in the terms of reference for adjudication as they did not form part of the original dispute which is referred for adjudication. The R.L.A. is requested to advise whether demands which did not form part of the original dispute, viz. wages for the period of strike and non-victimisation of employees who were on strike, could now be included in the terms of reference to the adjudicator.

3. Sub-rule(5) of rule 81-A of the Defence of India Rules provides:

"In this rule the expressions 'employer', 'lock-out 'strike', 'trade dispute' and'workman' shall have the meanings respectively assigned to them in section 2 of the Trade Disputes Act, (VII of 1929) --- "

"Trade dispute" as defined in clause (j) of section 2 means any dispute or difference between employers and employers, between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment, or with the conditions of labour of any person. The new demands now made by the I.C.I. employees are thus clearly within the scope of the above definition and have direct relation with the disputes already referred for adjudication. It appears rule 81-A was subsequently amended by the insertion of sub-rule

3A to provide for such contingencies for, power is taken there. under to add to, amend or vary the matters specified in the original order.

Sd/- 13Ø1

A.S.

As a result of the trade disputes between the Imperial Chemical Industries (India) Ltd. (Dyes Dept) and its Head Office employees and employees in the Dyes Factory, Govt. referred the disputes specified in Annexure 'A' for adjudication under clause (c) of sub-rule (1) of rule 81 of the D. of I. Rules, as continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946 (vide P. and S.D. Notfns. Nos. 544/46 and 544/46 I, dated 9-11-1946). Pp. 3-6

As a result of this, the strike was called off and the employees resumed work. As the Imperial Chemical Industries have paid the employees upto 15-10-46, that is, for the period before they went on strike, the employees have now pressed for the following supplymentary demands, namely:-

(1) that they should be paid wages for the period of the strike; and

(2) that there should be no victimisation of the emplpyees who were on strike.

The question for R.L.A's consideration is whether these demands can now be included in the terms of reference made to the adjudicator.

Under clause (i) of section 2 of the Emergency Provisions (Continuance) Ordinance, 1946, the provisions of the D. of I. Rules mentioned in the first column of the Schedule shall continue in force and

Mjr/11/5

4 C.

Office of the R.L.A.

There appears no objection to Government including the new demands in the terms of reference under the proviso (i) to sub-rule) (3-A) of rule 81-A of the Defence of India

Sd/- D.V. Vyas

O.C.

Remembrancer of Legal Affairs.

U.R. to P. and S.D., No. 753 , dated the 21st January 1947.

Mjr/11/5

4 C.

The compensation payable to the owner of premises requisitioned under rule 75A of the Defence of India Rules has to be determined under section 19(1) of the Defence of India Act either by agreement or by arbitration. There is no provision in the Defence of India Act or the rules thereunder that where the compensation is fixed by agreement the execution of an agreement is necessary: but under section 175(3) of the Government of India Act, 1935 all contracts made in the exercise of the executive authority of a Province shall be expressed to be made by the Governor of the Province and all such contracts and assurances of property made in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. In the present case it appears that the trustees of the requisitioned premises have agreed to the compensation determined by the Collector. Consequently the execution of an agreement would be necessary before the compensation could be paid to the trustees. It appears from a copy of the letter of the trustees at page 11 ante that they have declined to execute any agreement believing it to be a tenancy agreement. In his reply thereto at page 11 ante the Collector has clarified the position in view of which the trustees will most probably now agree to execute the necessary agreement. If they still decline, their attention may be invited to the aforesaid legal position and their reply awaited.

Sd/- D.V. Vyas
O.C. Remembrancer of Legal Affairs.

U.R. to R.D. No. 1042, dated the 30th January 1947

Mjr/11/5
4 C.

Submitted.

2. Please see pp. 13-14 ante. Government issued an order under rule 81(2)(bb)(iii) on Messrs. Vrajlal Kapurchand Mehta and Bros. the owners of the Toleng House at 16 Mathew Road, Bombay on 21-2-1946 by the Commissioner of Sales Tax, Bombay for his offices. By their letters dated 28-2-1946 and 7-3-1946 and oral requests made to the officers in R.D. the landlords desired Government to withdraw their order dated 21-2-1946 and in response to it Government passed an order on 15-5-1946 withdrawing the order dated21-2-1946 and handed over the possession of the building to the landlords It appears that the landlords accepted the surrender without protest. The R.L.A. in his opinion No. 5440, dated 3-8-1946 held that the lease was terminated by express surrender under clause (e) of section 111 of the Transfer of Property Act and it would not be open to the landlords now to turn round and say that the lease was not determined by a month's notice and consequently the claim of the landlords for a month's rent in lieu of notice would be defensible . The landlords were informed accordingly (p.15 ante). The landlords still hold the view that their claim for rent etc. for the notice period is justified for the reasons given in their letter at p 17 ante The Commissioner of Sales Tax does not consider that the arguments advanced by the landlords have any substance.

3. F.D. has not now forwarded the file which they had sent on the last occassion. In their letter dated the 16th November 1946 the landlords of the Toland House state that derequisitioning of the building on 31-5-1946 can not in any way be treated as if it is done in response to their letters of 28-2-1946 and 7-3-1946, that if Govt. wanted to derequisition the building in response to these

letters they would have done so immediately either on 28-2-1946, or 31-2-1946, and that as they did not do so they are justified in clamining rent for the notice month. This does not appear to be t e correct postiion. The facts of the case are that the building requisitioned by Government under rule 75-A of the Defence of India Rules for the Defence Department was derequisitioned on 21-2-1946 and an order under rule 81(2)(bb)(iii) was served on the new owners on 21-2-1946 by the Collector as the building was required by the Commissioner of Sales Tax. Subsquently this order was withdrawn on 15-5-1946 and the building was vacated on 31-5-1946 in response to the onwers' request. It is therefore apparent that the building was actually derequisitioned on 21-2-1946 and not on 31-5-1946 as stated by the owners. When the Commissioner of Sales Tax occupied the building in pursuance of the letting order dated 21-2-1946 the relationship of landlord and tenant on the basis of a monthly tenancy arose xxx and this tenancy was surrendered only when the owners made repeated requests to do so, The agguements advanced by the landlords have therefore no substance and the suit if filed would be defensible (of R.L.A. No. 5440 dated 3-8-49) The view taken by the Commissioner of Sales Tax in para his letter at p. 13 ante is correct.

Sd/- P.S. Nadkarni 13/12

As.

The F.D. has not sent the previous papers They are with the Revenue Department. The R.D. is not prepared to part with the previous papers unless officially called for. For reconsidering the R.L.A's opinion, it will be necessary to obtain the relevant papers. The F.D. may be requested to obtain and furnish this office with all the relevent papers bearing on the point

Sd/- 14/12/

A.L.R.

Mir/11/5
4C.

A mere relinquishment of the tenancy does not operate as a surrender, but if it is accepted by the lessor by taking over possession, it amounts to an implied surrender (p.1793 of Whitaley's Transfer of Property Act, Vol3). Though the order of letting the ground, first and second floors to the Comr. of ~~Exercise~~ Excise was withdrawn by Govt, from the letter addressed to the Collr. of Bombay, dated the 15th May 1946, it will be noticed that the Collr, was asked to take steps to restore the premises released to old tenant or tenants. If the Collr. has restored the premises to the tenants as directed by Government, and not to the landlords, it is doubtful if the plea of implied surrender can successfully be pleaded.

53 of papers of below

Sd/- 24/12

A.L.R.

The question has been fully considered by the R.L.A. in his last opinion No. 5440 dated 3-8-1946 & no new point has been raised by the land-lord. Since the matter is likely to go to a Court of Law the Solicitor to Govt may be requested to offer their remarks.

Sd/- 14/1/

R.L.A.

Sd/- D.V. Vyas 16/1

U.R. to Messers Kittle & Co., Solicitors to Govt. Bombay No. 602 dated 17-1-47

Njr/11/5

4 C.

Bombay ,24th January 1947
No. M/D/900

Below U.O.R. No. 602 dated the 17th January 1947 in file No. 6492/33/ 21936/39129 dated the 17th January 1947 (Re: Teland House).

Returned with compliments.

2. As far as it can been seen from the papers the tenancy created was surrendered to the Landlord, who appears to have accepted such surrender without protest. We do not therefore think that the Landlords can claim any rent as from the date of such vacating and handing over possession. Rents however prior to this date should be paid forthwith if that has not been done already.

Little Co.
Solicitors to the Government of Bombay.

R.M.

Those papers may be passed on U.O to the F.D. to which Deptt. , they should have been returned.

Sd/-
2-7-1947

U.O. to F.D. dated 28-1-47

Mjr/11/5/

4 C.

Finance Department (S.O.)

Please See O.N. dated the 9th December 1946 on pages 13-14-ante and the R.L.A. remarks dated the 16th January 1947. Please also see the ~~views~~ views of the solicitor to Govt. No 1[illegible]-900 dated the 24th January 1947. This papers may now be shown U.O. to the Court of Sales-Tax.

Sd/-
29/1/47

The solicitor seens to have returned thease papers with the R.D. file wrongly to R.D. instead of returning them to L.D. and R.D. has passed on these papers to this Department after retaining this papers. L.D. has not seen these papers on return from the Soliscitor They may be returned to L.D. with a request to give their opinion & return papers immidiately as his Land-Lord has sent several remainders in this matter

Sd/- 29/1/47

U.R. to the R.L.A. dated 29-1-47

Mjr/11/5

4 C.

As the matter is likely to be taken to Court by the landlords, the Solicitors to Government were consulted in the matter. They agree with the view expressed in R.L.A's opinion No. 5440, dated 3rd August 1946 that as the surrender was accepted by the landlords without protest, they cannot claim any rent from the date the vacant possession was handed over to them

A copy of the opinion of the Solicitor to Government accompanies.

Sd/-

D.V.Vyas

p.c. Remembrancer of Legal Affairs.

U.R. to F.L., No. 1179 , dated the 5th February 1947

Rjr/11/5

4 C.

No. S. 123/1/4521-B
Revenue Department
Bombay Castle, 5th February 1947

From
The Secretary to the Government of
Bombay, Revenue Department

To.
Lt. Col N.R. Kemsley, M.B.E., D.S.O., M.C.
Head Quarters, Bombay Area
Colaba, Bombay.

Subject:- Lands and Buildings.
Derequisitioning of-
Procedure regarding.

Sir,

With reference to your letter, No.67410 Q. 3, dated 24th January 1947, requesting Government Xixxx to cancel the orders issued in paragraph 2 of the Government Circular, No. S. 123/1/49597-B, dated 24th December 1946, on the ground that they would cause delay in derequisitioning of properties, I am directed to state that if the military authorities while asking the Collectors to derequisition tell them that the Government of Bombay does not wish to acquire the military assets created on the lands proposed to be derequisitioned, no delay will occur, since in that case Collectors will not approach Government for sanction to derequisition. I am to add that this Government will also endorse copies of its decisions on particular properties to the Collectors and Commissioners concerned.

3. The procedure being followed at present is that major assets are inspected by the officer on Special Duty as soon as advance information about them is received.

Your obedient servant,
R.L. Mehta

For Secretary to the Government of Bombay
Revenue Department

Hjr/11/5

No.

& C.

No. S. 123/1/4571-B
Revenue Department
Bombay Castle, 5th February 1947

Copies, with copies of the letter from Headquarters, Bombay Area, No.67410 Q.3, dated 24th January 1947 forwarded to

the Commissioners of Divisions,

All Collectors (including the Collector of Bombay

All Departments of Secretariat (except the Separate Department),

in continuation of Government Circular, No S. 123/1/49597-B, dated 24th December 1946

By order of the Governor of Bombay.

R.M. Mehta

For Secretary to the Government of Bombay,

Revenue Department.

Mjr/11/5

4 C.

Copy of letter from the Head Quarters, Bombay Area, No. C.3. dated 24th January 1947

Subject:- DISPOSAL OF LANDS AND BUILDINGS

I am directed to refer you to the Government of Bombay Circular G.C. No.S.123/1/4959-B R.D. dated 24th December 1946, paragraph 2 last four lines, which says "Collectors are further informed that in cases where the Defence Department has created substantial assets the previous sanction of Government to the derequisitioning should be obtained so that Government if interested may negotiate for their purchase."

2. This Head Quarters maintains that this procedure will not speed up, but on the contrary delay derequisitioning.

3. When a property is declared surplus, one of the reasons why copies of disposal orders etc., are endorsed to Mr. Bowman and Captain Mohite and to the Collectors concerned is to give the Bombay Government information well in advance, and where there are substantial assets, to enable the Government to negotiate for their purchase if interested. It is suggested, therefore, that the Government of Bombay should then decide whether or not they are going to purchase the assets in order to avoid any unnecessary delay in disposing of the project for release.

4. In view of this and the fact that a request for derequisitioning is not made until after assets have been cleared it is stressed, that the necessity does not arise of obtaining the previous sanction of the Government of Bombay to the derequisitioning of any property. There is however, ample time in which the Government can make a decision regarding the purchase of any assets when advance copies of disposal orders/instructions are forwarded to Bombay Government.

5. Under the circumstances will you please approach the Government of Bombay in the matter and point out the inevitable delay which would be caused by the procedure quoted in paragraph 1 above and urge upon them the necessity of cancelling it.

Mjr/11/5

4 C.

Resubmitted.

2. Please see the office note at pages 45-46 dated 3rd January 1947. The requisition order has now been received (vide slips S.) The condition 3 of the conditions, subject to which the requisition in question was made, is identical to the condition 3 of the order of requisition which was considered in R.L.A's opinion No. 4575 dated the 29-6-1944 (at slip C) Thus it is clear that Govt. is not liable to pay compensation in this case, as fire does not appear to be due to any negligence on the part of the Govt.

3. There is nothing in the papers stating that fire was due to negligence on the part of the Govt. servant, but in para 1 of the Dist. Magistrate and C.P. Nasik's letter it is stated "the fire broke out as a result of a half burnt bidi, having been thrown down in the godown premises by some one through carelessness. The services of the taluka Godown Manager and the Godown Manager, Manamad have therefore dispensed with. This gives rise to presumption, that there might have been some negligence on the part of the Govt. servant in charge of the premises. And if it is so proved, then Govt. would , as held by R.L.A. in his opinion No. 2215 dated the 22nd March 1945, be liable to make good the loss to the owner of the building (Halsbury Vol XX p. 233).

4. This liability of the Govt. will give rise to the question of the quantum of damage. The Govts. liability to pay damage will depend upon condition 3 of the Requisition Order, which states that "the property shall be restored to the owner as far as possible in the same condition in which it was on the date, on which the Mamlatdar of Nandgaon put in possession of it...". This clause means that the building will have to be rebuilt. But rebuilding will increase the value of the building, so the damages will be assessed by deducting the amount of this

P.T.O.

increase from the cost of rebuilding. (Vide Halsbury 0.234, held by R.L.A. in his opinion No. 2215, dated the 22nd March 1946 at slip R.).

Id./24/1/

S.S. The facts are stated in para 1 of the office note dated 3-1-1947. The order requisitioning the property was issued by the Collector of Nasik under rule 75A (1) of the D.of I Rules.

In his letter No. G.D.N. 815, dated 7.8.1946, the District Magistrate, Nasik states that "the enquiry made by the Police Dept. has revealed that the fire in the godown at Manmad broke out as a result of half burnt bidi not extinguished , having been thrown down in the godown premises by some one through carelessness." It is further stated that the services of the Taluka Godown Manager and the Godown Manager, Manmad, have been dispensed with. In his previous report the D.M. states that he visited the place on 24.5.1946, saw the damage and made some enquiries He states therein that "There appears to have been some negligence, more stupidity and a great deal of bad luck." The dismissal of the Taluka Godown Manager and the Godown Manager, Manmad, may be attributed to their negligence and want of proper care. In such an eventuality, it cannot be said that the fire was caused by vis major. The facts of this case appears to be distinguishable from those underlying R.L.A's opinion No. 4575, dated 29.6.1944. Consequently, Govt. cannot avoid their liability to restore the property on the plea of Vis Major. As fire was due to negligence of Govt. servants, Govt. would be liable to make good the

P. 27 ante.

Vide pp.1-2 ante.

pp. 205-206 of File O.D. of I./44 Pt. II, Slip C.

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Office of the R.L.A.

In his last opinion No.4575 dated the 29th June 1944the Remembrancer of Legal Affairs has opined that Government as the requisitioning authority would not, in the absence of negligence, be liable for the destruction of requisitioned premises by an accidental fire. Consequently Government would not be liable for damages done to the requisitioned premises in the present case unless of course there was negligence on the part of its servats and the fire was the result of that negligence.

Sd/- D.V. Vyas

O.C. Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 1690, dated the 13th February 1947

Mjr/11/5

4 C.

Submitted.

2. It appears that the Collector of Nasik by his orders Nos. L.N.D.-520 dated the 13th August, 1946, L.N.D., -527-1, dated the 14th August 1946, and L.N.D.-524-1, dated the 13th August 1946 cancelled his previous orders Nos.L.N.D.-520-1xxdnkx dated the 1st April 1943, L.N.D.-527-1, dated the 7th May 1943 and L.N.D.524-, dated the 5th May 1943 and kxNxR. requisting certain properties.

About 5 months later, he cancelled by his orders dated the 7th January 1946 (at pages 1 to 3 ante) the orders of 13th and 14th August 1946; specifying therein that the original requisitioning orders were revised until further order. The R.D. is doubtful whether it is legal to retain the property under requisition in view of the expiry of the Defence of India Rules. The question for the consideration of the R.L.A. is whether it is legal to retain the property by cancelling the orders which cancelled the original requisition orders.

3. On the derequisition of the property in question on the 13th and 14th August 1946 possession thereof should, in view of sec-19-B(1) of the Defence of India Act, ordinarily have been handed over either to the land-lord or tenant (vide-R.L.A's opinion No. 5468, dated the 5th August 1946). It is not known whether the possession was handed over. On the 7th January 1947 the Collector of Nasik issued orders cancelling the derequisitioning orders of 13th and 14th August 1946. The orders of the 7th January 1947 are invalid and ineffective and cannot revive the original requisitioning orders, firstly because the Defence of India Act and Rules made thereunder had expired on the 30th September 1946 and secondly because under sec. 6 of the General Clauses Act, 1897, such cancelling

orders do not revive the original orders. The derequisition was made prior to the coming into force of the section 3 of the Requisitioned Land (Continuance of Powers) Ordinance, 1946, the property therefore cannot be retained in possession (vide notes underlying R.L.A's No 8640, dated the 2nd December 1946). * Slip Z O. D. of 1./46

Id . T.Y.C. 18/2/

A.S.

It appears that certain properties were requisitioned by the Collector of Nasik under rule 75 -A of the D. of I. Rules by his orders Nos. L.N.D. 520, dated 1-4-1943, L.N.D. 527 dated 7.5.1943 and L.N.D. 524-1 dated 5.5.1943. These requisition orders appear to have been cancelled by the Collector on 13th, 14th and 15th August 1946 respectively. When these orders requisitioning the properties were cancelled they ceased to exist with effect from 14th August 1946. The orders of 1943 requisitioning the properties having ceased to exist were on 7.1.1947, and consequently they can not be revived no longer effective by merely rescinding the derequisitioning orders made in 1946 (cf. I.L.R.(1940) Bom.p.777 at 794).A

If approved, reply may be-- Seen and returned, followed by A-A above.

sd/- 20/2

R.L.R. I agree

Sd/- 21/2/

R.L.A.

Sd/-D.V.Vyas 26/2

U.R. to R.D. No. 2046 dated 1-3-1947

Mjr/11/5

4 C.

Lands and Buildings Bombay
Defence of India Rules.
Requisitioning of the fifth floor flat in "Firdaus".

Dispute regarding compensation and appointment of Arbitrator.

Government of Bombay,
Revenue Department,
Resolution No. 3739/45,
Bombay Castle, 24th March 1947

Letter from the Collector of Bombay No CP&D 54, dated 24th December 1946 forwarding an application, dated 6th December 1946, from Messrs Manavati Investment Corporation, Bombay, owners of the property known as "Firdaus", 56, Marine Drive, requesting for a reference to arbitration to determine the amount of compensation payable in respect of the flat requisitioned under the Defence of India Rules for the Consul General for Turkey.

Resolution:- Government has decided that the dispute regarding the amount of compensation payable in respect of the fifth floor flat together with the godown or servants' room on the ground floor and 2 garages in "Firdaus", 56, Marine Drive, belonging to M/s.. Manavati Investment Corporation, Bombay, requisitioned under rule 75-A of the Defence of India Rules on behalf of the Chief Secretary to Government, Political and Services Department, for the Consul General for Turkey, should be referred to arbitration in accordance with the provision of section 19 of the Defence of India Act 1939, and the rules for the conduct of arbitration proceedings published in Government Notification No. 7926/39, dated 21st July 1943 The application submitted by the owners of the requisitioned flat should accordingly be forwarded to the Arbitrator for determining the amount of compensation in respect of the flat.

2. In exercise of the powers of the Central Government under clause (b) of sub-clause section (1) of section 19 of the Defence of India Act, 1939(XXXV of 1939) entrusted to the Provincial Governments by the notification of the Government of India, Defence Department, No.1365-Or/42, dated 19th 19th September 1942 read with section 6 of the Requisitioned Land (Continuance of Powers) Ordinance, 1946, (Ordinance No. XIX of 1946), Governm t is pleased to appoint the

Chief Judge of the Small Cause Court Bombay, as arbitrator, The requisite notification regarding the appointment of the Chief Judge of the Small Cause Court, Bombay, as arbitrator should be published in the Bombay Government Gazette.

3. The Collector should be asked to convey these orders to the parties concerned and should report to Government the decision of the arbitrator and the expenditure incurred on account of the arbitration proceedings.

By order of the Governor of Bombay,

(J.B. Bowman).

Deputy Secretary to Government.

To.

The Collector of Bombay,
The Chief Judge of the Court of Small Causes (with the application),
The Accountant General (through the Finance Department).
The Legal Department,
The Political and Services Department.
The Home Department
The Finance Department.

Mjr/11/5

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The question referred to the R.L.A. for consideration is whether in cases where compensation is fixed by arbitration under section 19(1) of the Defence of India Act, 1939 and the awards are silent on the question of carrying out the current repairs to the requisitioned premises, the owners of the premises can be forced to execute an agreement requiring them to carry out the current repairs.

2. Section 19(1) of the Defence of India Act, 1939, whether whereunder the compensation for requisitioned premises is fixed by arbitration does not provide for the execution of any agreement between the owner of requisitioned premises and Government. The awards made under that provision have the force of a decree and are binding on both parties. If the awards do not specify as to who should carry out the current repairs to the requisitioned premises, Government will have to carry out such repairs, for Government is liable to restore, on derequisition, to the owners the requisitioned premises in the same condition in which they were at the time of requisition. The view taken by the Deputy Secretary, Revenue Department, is correct.

Sd/- D.V.Vyas

O.C. Remembrancer of Legal Affairs.

U.O.R. to R.B. No. 2013 dated the 28th February 1947

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to state what particular prohibitory order was in its contemplation. The C.S.D. has now forwarded

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L.D.R.I.No. 1637 dt. 12-2-47

Submitted -

Please see R.L.A's opinion No. 835, dated the 23rd January 1947 at p 17 ante. The C.S.D. has not returned the papers with a copy of Order called the Foodgrains (Furnitures and Opt ons) (Prohibi.ion) Order, 1946 which has been issued by the Govt. of India under Rule 81(2) of the Defence of India Rules. The Order applies to foodgrains specified in the Schedule and in the Schedule only wheat and gram have been specified (vide Order at p.21-22 ante). In its note at p.23/ante, theCC.S.D. states that no such order has been issued in respect of foodgrains rice and paddy. If this be the correct position, then it was unnecessary for the C.S.D. to show the papers again to the R.L.A. However as they are shown again, they may be returned with a remark "seen and returned.

Sd/-17/3

A.S.

In his note dated 8-11-46, the Grain Purchasing Officer states that a point was raised by the President of the Rice Millers' Association that the agreements entered into by millers with the Government for supplying rice are in the nature ~~thexprohibi-~~ of forward contracts and as such are illegal under the prohibitory orders under the D. of I. Rules. In this office U.O. No. 835 dated 23-1-47, the C.S.D. was requested ※ a copy of the Foodgrains (Future and Options)(Prohibition) Order, 1946. Under clause 3 of the said order, no person can, except with the permission of the Central Govt. or of an office authorised by the Central Govt. enter into any futures in foodgrain or pay or receive or agree to receive any margin in connection with any such futures or ~~with~~ enter into any option in foodgrain. The term "foodgrain" as defined in cl. 2(e) read with the schedule me ns wheat and

※ At page slip

P.T.O.

gram; it does not include rice. It is evident that the said Order debars a person from entering into agreements relating to any futures in foodgrains or any option in foodgrain except with the permission of the central Govt. It has not bearing whatsoever to agreements entered into by Millers with Govt. for the supply of rice bags, , firstly because rice is not included in "foodgrain" and secondly because such agreements are not of the nature of forward contracts. The C.S.D. should not have made the present reference to R.L.A. on a point which is so apparent.

Sd/-
18/3

A.L.R.

Papers may be seen & returned

Sd/-
18/3

R.L.A.

Sd/- D.V. Vyas
20/3

U.R. to C.S.D. No. 2878 dated 25-3-1947

Mjr/11/5

4 C.

No. 3739/45-818-A.
Revenue Department,
Bombay Castle, 7th April 1947

From

The Deputy Secretary to the Government of Bombay
Revenue Department

To.

H.S. Morchha Esquire.,
B.A. LL.B.,
Chief Judge,
Court of Small Causes,
Bombay.

Subject :- Lands and Buildings Bombay
Defence of India Rules.
Requisitioning of the fifth floor flat
in "Firdaus".
Dispute regarding compensation + appointment of arbitrator

Sir,

With reference to your letter, No. 139 of 1947 , dated 29th March 1947, I am directed to state that Government is pleased to extend the time for making and publishing the award in the arbitration matter in question to the 16th of August 1947.

Your obedient servant,

R.M. Mehta.

For Deputy Secretary to the Government of Bombay,
Revenue Department.

Copies forwarded for information to:-

the Collector of Bombay,
the Accountant General,
the Legal Department,
the Finance Department,
the Political and Services Department,
the Home Department.

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L.D. R.I. No.3838 dated 29-.

Submitted

The question raised for R.L.A's consideration is whether Khan Sheb Ramzanally Jamalbhai, owner of the building "Horizon View" can be prosecuted for failure to comply with the order of Government issued under rule 81(2) of the Defence of India Rules directing him to let Flat No. 4 of the said building to Mr. S.A. Hatt-ees.

Facts of the case are stated in the F.D. note at pp. 53-56 ante and for the sake of convenience they are restated here: On hearing from the Military authorities that they will be vacating flat No.4. in the premises known as "Horizon View" which was requisitioned under Rule 75A, Government issued orders to The Collr. Of Bombay in its letter dated the 24th September 1945 directing him to de-requisition the flat and to serve simultaneously on the landlord a Government order under Rule 81(2) directing the letting of the premises to Mr. S.A. Hattees. On the 27th September 1946, the Collr. of Bombay, in pursuance of the directions of Government sent a letter to Khan Saheb Ramzanally enclosing therewith his order under section 19-B of the Defence of India Act, and Government order under Rule 81(2) and stating that he is withdrawing his requisition order in respect ofthe flat with immediate effect. This letter of the Collr. was sent by "Express Dilivery Post" on 28-9-46 and the Collr. is unable to state when it might have reached the landlord. On the 27th September 1946 it

p. 9. ante

p. 23 ante.

p. 45 ante.

appears, Mr. Hatteea obtained the keys of the premises from the Military Authorities (p.53) and on the 29th September he sent his servant and brother to clean the premises in question. But the land-lord, it appears, refused to allow them to enter. Thereafter Mr. Hatteea himself went to see the landlord who appears to have denied the receipt of Government order under Rule 81(2) and stated further that he would not abide by it. At the same time the landlord appears to have shown Mr. Hatteea Collr's letter releasing the flat. On the 30th September again, Mr. Hatteea appears to have tried to obtain possession but at this time also, he was refused admittance (vide p. 41). These are briefly the facts on which it is to be decided whether a prosecution can be launched.

From Collr's letter at p.23 it is obvious that the order of de-requisition and Government order under Rule 81(2) were sent simultaneously under once cover. From Mr. Hatteea's letter at p. ~~14x~~ 41 ante, it is clear that Khan Saheb Ramzanally was in receipt of the Collr's letter and presumably therefore he was in receipt of Government Order under Rule 81(2) which was forwarded therewith. Even assuming that the Order under Rule 81(2) was not enclosed, through mistake, still on Mr. Hatteea's showing that Order to him Khan Saheb Ramzanally was bound to comply with it (vide Rule 5 of the D.I. rs.). His refusal to abide by Government Order was hence not justifiable. This appears to be a clear breach of Government Order and a prosecution will lie.

Id/2-4

A.S. I agree
Khan Saheb Ramzanally Jamalbhai for contravening the order of Govt issued under rule 81(2)(bb)(iii) of the R. of ~~the~~ Rules.

Sd/-

A.L.R. I agree
Reply may be in terms of

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Office of the R.L.A.

Prima facie there appears to be a good case for prosecuting Khan Saheb Ramzanally Jamalbhai for contravening the order of Government issued under rule 81(2)(bb)(iii) of the Defence of India Rules.

Sd/- D.V.Vyas

S.C.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3505 dated the 11th April 1947

Mjr/11/5

4 C.

and that his report was awaited (p. 47 ante). In its note dated 3-3-47, R.D. presumes that the amount payable in respect of

L.D. R.T. No. 32-5 dated 17-3-47

Submitted.

Please see Revenue Department notes at p. 53 ante. The facts, so far as they are relevant for consideration of the point referred to R.L.A. are these: A Bunglow on the Todiwala Road, Poona was requisitioned in the year 1945 for the Mechanical and Transport Engineer, Poona. On 12th June 1946 it was derequisitioned and possession was handed over to the tenant- Mrs. Deokaran Nanji. A question however arose as to whom rent for the requisitioning period should be paid as both Mrs. Nanjee, the tenant, as well as the owner of the bungalow, Mr. K.H. Vakil were demanding it. This point was referred to R.L.A. and in his opinion No.5668, dated the 15th August 1946, he advised that if both of them were demanding the rent, the proper course would be to file a suit of interpleader and pay the rent into court.(Vide p.15 ante). The Collr. of Poona accordingly wrote to the parties settle their dispute regarding rent and in case they were unable to do so intimated that he will deposit the money in court and file an interpleader suit (vide letters at pp.41-43 ante). The bungalow it appears had also suffered damage to some extent in the period of requisition and hence Government requested the Collr. to state what arrangements he had made regarding compensation in this respect (vide pp.45-46 ante). In reply the Collr. of Poona stated that he has asked the Executive Engineer to assess the damage done to the property will have to be likewise deposited in court but the Deputy Secretary, R.D. observes: "There would seem no legal objection to Government spending this money to effect repairs to put the property in its prerequisitioning State. The money need not be given to tenant or owner".

※ Pl. See Slip

P.T.O.

The papers have been referred to R.L.A. for advise. On derequisitioning Government is liable to/restore the premises to the owners in the same condition in which they were at the time of requisition (~~xxRix~~ of. R.L.A.'s opinion No. 2013 dated 28-2-47). There is therefore no objection to spend the money on repairs instead of giving it to the tenant or owner. The view taken by the Deputy Secretary R.D. is correct. * Put up Slip Below

Sd/- 26/3/

A.S.

(I am unable to agree)

It is evident that possession of Bunglow No. 9 Todiwall Road, Poona, has been restored to Mrs. Devakaran Nanjee, the old tenat. As both the owner and tenant claimed the arrear of rent from Govt. as advised by the R.L.A. (See R.L.A's No. 5668, dated 15-8-46) the Collr. of Poona deposited the amount (Rs.1,065-14-0) in the Civil Court (J.D.) Poona, and an inter-pleader suit appears to have been filed. Vide-p.13 ant p. 15 pp.41-43

It appears that when the Bungalow in question was restored to Mrs. Devakaran Nanjee, it was in such a deteriorated and uninhabitable condition that she had to spend about six to seven hundred rupees for carrying out certain repairs. It is stated that an expenditure of Rs.1,500 to 2,000/- is necessary to put the house in proper order, The Ex. Engineer, Poona Division, has been asked to assess deterioration to the Bungalow p.31-39 p. 47

The question for R.L.A's consideration is whether there is any legal objection to Govt. not giving to the owner or tenant the amount assessed as damages for deterioration of the property, and to its spending it for effecting repairs to the p. 47

Office of the R.L.A.

Condition 3 of the Requisition Order provides for the restoration of the property as far as possible in the same condition in which it was when requisitioned and the payment of compensation if the property has deteriorated. Since the property was derequisitioned and restored to the tenant in June 1946 it would not be now possible for Government to effect repairs to the property. Government will have therefore to deposit in the Court also the compensation for the deterioration of property during the period of requisition. The view expressed by D.G. (R.D.) in the margin at page 53 ante is not correct.

Sd/- D.V. Vyas

O.C.

Remembrancer of Legal Affairs.

U.H. to R.D. No. 3287, dated the 3rd April 1947.

Kjr/11/3

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Under section 175(3) of the Government of India Act, 1935, all contracts made in the exercise of the executive authority of a Province should be expressed to be made by the Governor of the Province and all such contracts should be executed on behalf of the Governor by such person and in such manner as he may direct or otherwise; and there is no such contract executed in the present case between Government and Mr. Bharucha. The Government of India Act, 1915, contained a provision similar to section 175(3) of the Government of India Act, 1935, and that provision was considered in Secretary of State vs. Bhagwandas Goverdhandas (40 Bom. L.R. 19) His Lordship the Chief Justice observed in that case as follows:-

> "In any case I apprehend that if parties reply on a contract to be spelt out of a series of letters, it would generally be very difficult to show that the contract complied with section 30 of the Government of India Act, and obviously in a case to which that section applies the parties would be wise in having a formal document, inter partes. I do not wish, however, to bind myself to the proposition that in no case can a contract comply with section 30 unless it takes the form of a contract inter partes. It is possible that a contract in the form of letters, complying with the provisions of section 30 and signed by the proper officer would be a contract complying with the terms of the Act."

The question for the consideration would, therefore, be whe a contract can be spelt from the letters that have passed between Government and Mr. Bharucha in respect of compensat under clause (a) of section 19(1) of the Defence of India Act, 1939. By letter No. 3246-H-28, dated 3rd May 1944, Government accepted the proposal of Mr. Bharucha to lease lands in lieu of the compensation payable to him for the lands, buildings etc. at Kolegaon and Morekuran requisition from him subject to certain conditions. That letter was signed by Secretary to Government, by order of the Governor of Bombay, and addressed to the Deputy Director General, Da

P.T.O.

Farming. It appears that the contents of that letter were conveyed to Mr. Bharucha who by his letter dated 6th May 1944 informed Government that he was fully agreeable to the grant of land as proposed by Government. In pursuance of this offer and acceptance, some other lands were given to Mr. Bharucha on condition that he should enjoy them in lieu of compensation for the requisitioned lands during the period of requisition. Mr. Bharucha who has been now claiming compensation at the rate of Rs.6,000 per month from Government in his letter dated 9th October 1946 has not denied the contract. His contention appears to be as follows:-

"I have further to point out that with a view to aid Government in the prosectuion of the war I had agreed to forgego the rent of the buildings structures etc., during the period of the war. As, however, the said buildings structures etc., have not been given in my possession by 30th September 1946, as stipulated by Government in their original requisition order I wish now to exercise my rights to claim rent of the said buildings as from 1st October 1946, and have to request you to please note that Government shall be responsible to pay me rent at the rate of Rs.6,000 (Rupees six thousand) per month for the period from 1st October 1946 till the date on which prossession of the said buildings etc. may be handed over to me."

It is clear from the aforesaid letter of the Government of Bombay No. 3246-28, dated 3rd May 1944 that Government lands were proposed to be given to Mr. Bharucha in lieu of compensation payavle to him for the lands and buildings etc. requisitioned from him. Consequently if an agreement could be spelt from the correspondence- and I think there is enough evidence to spell out such a contract.- it would not be open to Mr. Bharucha to claim extra compensation for the requisitioned buildings. Further Mr. Bharucha seems to have lost sight of section 2(b) of Ordinance No. XIX of 1946 whereby all agreements and awards under section 19 of the Defence of India Act, 1939, in regard to

the payment of compensation for the period of requisition before the commencement of this Ordinance shall continue to be in force and shall apply to payment of compensation for the period of requisition after the commencement of this Ordinance. It is, therefore, apparent that during the period of requisition, the compensation fixed under the contract would be binding both on Government and Mr. Bharucha, and consequently Mr. Bharucha can have no claim for compensation of Rs.6,000 per month on account of buildings and structures as alleged.

Sd/-

D.V.Vyas

O.C.

Remembrancer of Legal Affairs.

U.R. to the Supply Commissioner, No 3520, dated the 11th April 1947

Rjr/14/5

4 C.

Office of the R.L.A.

Statement of the Case.

A flat on the second floor of the Everest House along with garage, belonging to late Mr. R.D. Sethna was requisitioned by the Collector of Bombay under Rules 75A of the Defence of India Rules by his order No.C.P.W.D./68, dated the 4th January 1945 and the possession was taken on the 6th January 1946. The Collector of Bombay fixed the compensation for the requisitioned premises at Rs.250 which was the monthly gross rent fetched by the flat and garage and it appears that for the months of January and February this compensation was duly paid. Sometime thereafter the Collector asked the Trustees of the properties of Mr. R.D. Sethna to execute an agreement in the form at pages 7-8 ante which the Trustees refused, contending that they were not aware of any provision which compels them to enter into any tenancy agreement with Government in case of requisitioned premises. The Trustees having refused to sign the agreement Collector withheld the payment of compensation from March 1946 and referred the matter to Government.

On a reference to the Remembrancer of Legal Affairs, he advised in his opinion No. 1042, dated the 30th January 1947, as follows:-

"The compensation payable to the owner of premises requisitioned under rule 75A of the Defence of India Rules has to be determined under section 19(1) of the Defence of India Act either by agreement or by arbitration. There is no provision in the Defence of India Act or the rules thereunder that where the compensation is fixed by agreement the execution of an agreement is necessary; but under section 175(3) of the Government of India Act, 1935 all contracts made in the exercise of the executive authority of a Province shall be expressed to be made by the Governor of the Province and all such contracts and assurances of property made

in the exercise of that authority shall be executed on behalf of the Governor by such persons and in such manner as he may direct/or authorise. In the present case it appears that the trustees of the requisitioned premises have agreed to the compensation determined by the Collector. Consequently the execution of an agreement would be necessary before the compensation could be paid to the trustees. It appears from a copy of the letter of the trustees at page 11 ante that they have declined to execute any agreement believing it to be a tenancy agreement. In his reply thereto at page 11 ante the Collector has clarified the position in view of which the trustees will most probably now agree to execute the necessary agreement. If they still decline, their attention may be invited to the foresaid legal position and their reply awaited."

The Collector informed the Trustees on the lines of Remembrancer of Legal Affairs' opinion, but still the Trustees are not agreeable to execute the agreement. Moreover, they have given a notice of suit to the Governor General in Council calling upon Government to vacate and deliver up possession and pay up the arrears of rent. p- 29

p- 21

From the notice of suit it appears that the Collector has paid the compensation for the premises without execution of agreement for the first two months which fact was not brought to the notice of the Ramembrancer of Legal Affairs when he gave his opinion. As the compensation was paid without an agreement for some months, it is doubtful whether an agreement can now be insisted upon. As the matter is doubtful and likely to lead to litigation

Solicitors to Government are requested to advise Government in the matter.(cf. Rule 67(3) of the Law Officers Rules).

Sd/- D.V.Vyas

O.C. Remembrancer of Legal Affairs.

U.R. to Messrs Little & Co., Solicitors to Government, No.2934 dated the 26th March 1947.

HJr/14/5

4 C.

Bombay, 7th April 1947
No. M/D/3873 of 1947

Returned with compliments.

2. We agree generally with the opinion expressed by R.L.A.

3. Section 19(1) provides for the amount of -- compensation payable upon a requisition of immoveable property to be paid by agreement and where no -- agreement is reached then by arbitration . It is , therefore, necessary that either of the above courses should be accepted by the Landlords. If the amount is to be fixed by an agreement there should be a writing to that effect as would be binding not only on the Landlords but also on Government which can only be by complying with the requirements of Section 175(3).

4. We therefore think that a reply may be sent to the Landlords to the effect above mentioned and adding further that Government has always been ready and willing to pay the amount of compensation. It should however be made clear that Government do not admit such statements in the letter of the 27th February 1947 since it is incorrect to state that there is any "Rent" payable by Government or that Government is bound by the terms of any-- ordinary tenancy. There isno tenancy as a matter of fact and what is really due and payable by -- Government is by way of compensation.

Little Co.
Solicitors to Government.

Encl: -

A.S.

M/D/3873/5

Office of the R.L.A.

A statement of the case together with a copy of the opinion of Messrs. Little & Co., Solicitors to Government is appended.

2. The Revenue Department may take further action as indicated by the Solicitors to Government.

Sd/- D.V. Vyas.

O.C. Remembrancer of Legal Affairs.

U.R. to R.D. , No. 3760 dated the 17th April. 1947

Rjr/14/5

4 C.

L E T T E R .

To.

The Collector of Nasik.

No. 7556/39/13048-B. Bombay , 17th April 1947.

With reference to your letter, No. R.C.N.W.S. 308, dated 16th March 1947 inquiring whether the previous sanction of the Defence Authorities or the Central Government is necessary for fixation and payment of terminal compensation, your attention is invited to Government Endorsement, No. 7556/39/12290/-B, (Confl). dated 21st May 1946, Though such sanction is not strictly necessary, it is desirable that ~~xxx~~ terminal compensation should be fixed in consultation with the Defence Authorities concerned.

By order of the Governor of Bombay,

R.L. Mehta.

For Deputy Secretary to the Government of Bombay, Revenue Department.

Copies forwarded to:-

The Commissioners of Divisions,

all Collectors, (including the collector of Bombay),

all Departments of the Secretariate, (except the Separate Department),

in continuation of Government Endorsement, No. 7556/39 16422-B (Confl,) dated 4th June 1946.

Mjr/14/5

A C.

This is in respect of the property known as "Sans Souci" on Plot No. 18 of Bandra which was requisitioned by the Collector, B.S. D. under his order dated 1-11-43 issued under rule 75A of the Defence of India Rules. The owner of the premises applied for reference being made to arbitration for assessing the compensation.

Vide p. 1. ante.

"p. 45 do.

Government appointed the Chief Judge, Small Causes Court as arbitrator under Sec. 19(1)(b) of the D. of I. Act, for determining the amount of compensation payable to the claimant in respect of the property.

pp. 57-58 do.

For the reasons stated by the Solicitors to Government in their letter dated 23-4-47, they suggest the the claim may be settled for Rs.456-8-0. The Collector, B.S.D. approves of it and recommends Government to sanction the compromise arrived at. The P.W.D. have accepted the terms proposed by the Collector, B.S.D. and have referred the papers to R.L.A. for advice.

The P.W.D. has not stated on what particular point the R.L.A's advice is required. No legal point appears to be involved / As the matter is immediate and as the papers are required by to-day the papers may be seen and returned. With the remark that the procedure indicated at 'A' of the Collector's letter is free from objection.

However, if it is a question of procedure, there is no objection to following the procedure indicated in Collector's letter at 'A' which is based on R.L.A's No. 4447, dated 26-6-44(p.58,ante)

Sd/- 25/4

A.L.R.

The compensation is considered fair by assessors on both sides. There appears/ therefore no objection to Govt. agreeing to pay it. Papers may be seen & returned

Sd/- 25/4/

R.L.A.

Sd/- P.M. Lad.

P.T.O.

Office of the R.L.A.

Seen and returned

Sd/- P.M.Lad
25/4

o.c.
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 4228 dated the 26th April 1947

Mjr/14/5

4 C.

Submitted.

2. It appears that the Khandalwa Mansion, Sewri, was requisitioned under the Defence of India Rules for the members of Auxiliary Fire Service. The A.F.S. was disbanded with effect from the 1st April 1946 as the war was over, and the buildings have been ordered to be derequisitioned. But some of the ex-members of the A.F.S. have not yet vacated the premises and the landlords are not agreeable to accept them as tenants and want vacant possession of the building. The R.D. to whom the papers were referred to by the R.D. in their note (para 3) on page 27, Consider that Government had the legal obligation to hand over vacant possession to the landlord when the derequisition order was issued and that the point for consideration is whether the remedy for eviction which was provided by old rule 132 of the Defence of India Rules still existed. The R.D. has referred the papers to the R.L.A. on this point.

3. The question for consideration of the R.L.A. is whether or the landlord should be left to sue the occupants for ejecting them or whether Government should take steps to secure the occupants eviction.

The question depends upon whether Government has power to evict persons occupying a building which was requisitioned for housing them and now derequisitioned, in order to give vacant possession to the landlord. Otherwise the landlord must be left to sue the occupants for getting vacant possession

P.T.O.

On derequisition of the building it was the liability of Government to give vacant possession to the landlord or the old tenants. The Defence of India Rules have expired, and therefore the power under rule 132 thereof under which action could be taken for evicting cannot be availed of.

"However under clause (ii) def of section 2 of the Emergency Provisions (Continuance) Ordinance, 1946 (Ordinance XX of 1946), read with the schedule, in the absence of a provision on the lines of rule 132 of the Defence of India Rules no action can be taken against the tenants for forcible eviction from the building in question " (Cf. R.L.A.'s) 7522 dated the 9th November 1946). In the absence @ Slip in Z O.V. of I/47 Pt.II of any power under the Requisitioned Land (Continuance of Power) Act, 1947, building xxxxx and considering Government's liability to give vacant possession, the matter may be settled amicably with the landlord failing that he may be left to sue the occupants for ejectment.

Sd/- T.Y. Choudhari

11/4

Has the orders de-requisitioning "Khsandalwal Mansion been issued by the Governor.

A.G.

After the property is de-requisitioned and possession restored to the owner, can Govt. interfere at this state? Ful up R.L.A.'s No.6711 dated 2-10-46

Sd/-

12/4/

Resubmitted as directed by A.G.

2. On informal inquiries in the R.D. it is understood that the derequisitioning order in respect of Khandalwal Mansions has been issued. It is further gathered that vacant possession of the building has not been handed over either to the old tenants or the landlord.

3. R.L.A.'s opinion No. 6711, dated the 2nd

Mjr/14/5/

4

Office of R.L.A

Under the terms of the requisition Order issued under rule 75A of the Defence of India Rules, on de-requisitioning of the premises Government is bound to give to the landlord vacant possession of the same (see R.L.A's opinion No.6350, it will be for Government to apply to the Small Cause Court under section 41 of the Presidency Small Cause Courts Act, 1882(cf. R.L.A's opinion No. 8255, dated 20-11-1946).

Sd/- P.M. Lad. 24/4/

o.c.q.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 4813 dated the 24th April 1947

Mjr/14/5

4 C.

Submitted.

2. Flat No. 2 on the First Floor of the building known as "Farokh Mahal" situate at Churchgate Street, Bombay, was requisitioned by the Collector of Bombay on the 24th September 1946, and possession thereof was taken by Professor K.H.Mahishi on the 27th September 1946. The occupant of the flat Mr. Kantilal Shah thereupon filed a petition in the High Court challenging the validity of the requisition order. The Collector of Bombay in his letter at p. 183 ante states that on the advice of the Govt. Solicitors Prof. Mahishi did not occupy the flat till the judgement in the rule was delivered (i.e. on the 16th January 1947). To the request of Prof. Mahishi that the rent for the period from 27th September 1946-- the date on which he took possession of the requisitioned flat-- to the date he actually occupied it be borne by Govt., the Collector is inclined to agree and recommends the same to Govt. H.D. also appears to agree provided if the advice of the Government Solicitors not to occupy the flat till the High Court decided the rule is correct. The question for the consideration of the R.L.A. is whether the advice of Government Solicitors not to occupy the requisitioned flat till the rule was decided by the High Court is correct.

3. The papers purporting to contain the advice of the Solicitors to Government not to occupy the premises till the High Court decides the rule are not among the papers forwarded to the R.L.A. It cannot therefore be understood in what circumstances the advice was given by the Solicitor. May be perhaps in anticipation of the case being decided against Government, but this question is not so relevant for the purposes of the case. Prof. Mahishi took possession of the flat on the 27th

p.t.o.

September 1946 and it is immaterial whether he occupied it or not and whether on the advice of the Government Solicitors or on his own accord. It is for R.C.D. as the administrative department to decide whether Govt. should or should not pay the rent for the period during which the flat was unoccupied.

Sd/- T.Y.Choudhari.
17/2/

A.S.

It appears that though the order requisitioning the flat on the first floor of "Parekh Mahal" was issued on 29th July 1946 on the landlord and Messrs. Lal and Kantilal Shah for delivering the possession of the flat to Govt. with effect from 1.8.1946, the actual possession was taken by Prof. Mahishi on the evening of 27th September 1946. As, however, the previous occupant, Mr. Kantilal Shah, filed a petition in the High Court and obtained a rule against Govt., on the advice of the Solicitors to Govt., Prof. Mahishi did not occupy the premises till the judgment discharging the rule was delivered on 16.1.1947. Prof Mahishi requests that the rent for the period from 27-9-1946 to the date of his actual occupation may be borne by Govt.

p.109 ante

p.145 do"

p.155 do

p.183 do

The question for R.L.A's consideration is whether the advice of the Solicitors to Govt. to Prof. Mahishi not to occupy the flat was correct.

A requisition order issued under rule 75 A of the D. of I. Rules does not create the relationship of landlord and tenant between the owner and the Govt. Consequently the rent paid by the occupant is nothing but the compensation paid on behalf of Govt. The liability to pay compensation (rent) therefore rests with Govt. and it is a matter of policy for the R.C.D. to decide whether Prof. Mahishi's request should be granted.

As Govt. requisitioned the premises, and as the rule was issued against Govt., the solicitors to Govt. rightly

advised Prof. Kahishi not to occupy the premises till the rule was discharged.

Id/- 17/2/

A.L.F.

It is not known why the Govt. Solicitors advised Prof Kahishi not to occupy the premises when he had already taken possession .Govt Solicitors may see these papers.

Sd/- R.T. Katarki
18/2/

R.L.A.

Sd/- D.V.Vyas
18/2/

U.O. to Messrs Little & Co.
~~Ex~~ No. 1735 dated 20-2- 1947

Mjr/14/5

4 C.

Bombay, 7th April 1947

No. M/D 3879 of 1947

Below O.O.B.No. 1735 dated 20th February 1947 from R.L.A.- Re: Kantilal Nathalal Ghah vs. R.G. Davies.

Returned with compliments.

2. In these proceedings the Petitioner alleged that there was no Requisition Order against the tenant and therefore n. requisition of the Lessees kenant and therefore no requisition interest in the flat. He therefore contended that the requisition was "not justified either under Rule 75A or under Rule 132". One of the prayers in the Petition was that the Collector should be -- ordered to remove the lock placed by him on the outer door of the flat in question.

3. The Hon'ble Mr. Justice Bhagwati had on 8th October 1946 in Mis. No. 155 of 1946 Jaygopal-- Narayendas vs. The Collector of Bombay held that want of service of the R.O. on the Tenant amounted to there being no requisition of the Lessees interest "with the result that whatever action the Respondent purported to take by way of enforcement of the -- requisition order was not justified under either Rule 75A or rule 132 of xx Defence of India Rules ".

4. Having regard to the above position and as in the present case there was no personal service of the R.O. upon Mr. Lal but by delivery to one Mr. Khambatta at C.C.I. it was considered advisable that nothing should be done to prejudice Government's position until the issue as to the service of the R.O. upon the tenant was decided. It was for this reason that the Collect.r was advised to maintain "status quo" as at the date of the issue of the Rule Nisi.

Little & Co.
Solicitors to Govern=nt.

Encls:-

Mjr/14/5 & C.

Office of the R.L.A.

The advice given by the Solicitors to Government was quite proper in the circumstances of the case. The view taken by Deputy Secretary, Revenue Department at page 186 ante is corect.

A copy of the letter of the Solicitor to Government in this behalf is sent herewith.

Sd/- P.M.Lad 30/4/

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4423 , dated the 1st May 1947

Mjr/14/5

4 C.

Submitted.

The facts of the case under reference are that a room on the ground floor of Chawl No. 133, Hill Road, Bandra, belonging to Mr. Y.S.Peerbhoy was requisitioned by the Collector Bombay S.D. Under No. W.A.R. 274,,dated the 17th April 1945, at the instance of the Controller of Govt. Grain Shops for skimmed milk power scheme. The fair rental for the room in question was estimated by the Executive Engineer Northern Division, Thana, at Rs.20/- per month, but was increased to Rs.50/- in the light of the statement made before the District Deputy Collector, The Owner declined the offer and has put in his claim as under:-

Rs. ~~25/-~~ 250/- per month as compensation (rent) for the room.
Rs.15,000/-for loss suffered by him by the compulsory evacuation.

The Collector is of the opinion that there is no possibility of arriving at a settlement with the owner, as the claim put forth is much exaggerated and the difference between the rent offered by him and that claimed by the owner is very great.

In view of this, the Collector requests that the matter may be referred to the arbitration and suggests the names of Chief Judge, Small Causes Court, Bombay as an arbitrator. The Executive Engineer, South Thana Division as an expert to assist the arbitrator, and the Solicitors to Govt. of Bombay to conduct the case on behalf of Govt.

The case has been referred to L.D. by C.S.D. for advise.

Section 19(I)(b) of the Defence of India Act, 1939 provides that where no agreement regarding the compensation to be paid in respect of requisitioned property can be reached, the Central Govt. shall appoint as an arbitrator a person qualified under sub-section (3) of section 220 of the Govt. of India Act, 1935, for appointment as a Judge of a High Court for deciding the same. Sub-section (c) further provides that Central Govt. may in a particular case, nominate.

-P.T.O.

a person having expert knowledge as to the nature of the property acquired to assist the arbitrator. These provisions have been continued by S.S. of the Requisitioned Land (Continuance of Powers) Act, 1947. Thus it is clear that where no agreement is possible between the two parties as to the amount of compensation to be awarded the matter is to be referred to the arbitration. It is not hence clear on what point of law C.S.D. wants advice from this office . If approved, the C.S.D. may be advised to take steps to appoint and India Act, 1935 as the amount of compensation cannot be settled amicably.

Sd/- K-B-B-
24/4

A.S.

(The reference to R.L.A. is unnecessary)

A vacant room on the ground floor of chawl No. 133, Hill Road Bhandra, was requisitioned by the Collector, D.S.D. under his Order No. W.A.E-274 dated 17-4-1945 issued under rule 75^A of the D. of I Rules. The fair rental of the room was estimated by the Executive Engineer, North Thana Division, at Rs. 25/- per month which, in light of the statement made before the D.D.C. was further increased to Rs.50/- per month, but the trustees declined to accept the offer. One of the Trustees of Shahsnally Feerbhoy Damji Trust has put in a claim for compensation at the rate of Rs. 250/- per month and Rs.15000/- for loss suffered on account of eviction and requests that the matter to referred to the arbitration. Under the circumstances, the Collr., S.S.D. suggests that the Chief Judge, Small Causes Court, Bombay be appointed as Arbitrator, and the Ex-Engineer, South Division Thana, be appointed as an expert to assist the arbitrator. He further states that the Solicitors to Govt. may be appointed to conduct the case on behalf.

Vide Slip 'F' in Milk Comm.'s File No. 2

Vide pp.1-3 ante

p. 70 Do.

Mjr/14/5

4 C.

Office of the H.L.A.

The precise point on which advice is sought is not stated. The reference seems unnecessary. If there is no prospect of private settlement, steps should be taken to appoint an arbitrator.

Sd/- P.K.Lad 20/4

C.C.
Remembrancer of Legal Affairs.

Mjr/14/5
4 C.

L.E.& R.I.No. 2115/47
dated ~~the~~ 24-2-47
24

Submitted.

The facts of the case are that, the Coronation Hotel bearing Cantonment house Nos. 14 to 17 was requisitioned under Collector's Order No. L.N.D. 526-IV dated 8th June 1943 for Garrison Mess. The owner Mr. Damania was running on flourishing hotel in the premises and it was his only source of income. In July 1943, Mr. Damania represented his case to the Collector, who told him to put in a claim which would be given every consideration, since he was entitled to be compensated fully for losses arising -the requisitioning. Accordingly the claim was put in and ont of the Collector made in award on 9-10-46 but being dissatisified with the amount of compensation, Mr. Damania has presented an application for a reference to Arbitration.

The following statement shows the points of dispute:-

Item	Amount demanded by Mr. Damania	Amount awarded by the Collector
For inconvenience caused by requisitioning and for alternative accommodation	Rs. 19,000/-(35% on the value of the building)	Nil
On account of the loss of income from the hotel.	Rs. 19,800/-Rs.600/- p.m. for the period of requisition i.e. from 28-7-43 to 28-4-46)	Rs.4,800/-
On account of loss due to the compulsory sale of furniture.	Rs.7,500/-(because furniture worth Rs. 10,000/- had to be sold for Rs.2,500/-)	Rs.5,000/-

To assist the arbitrator the Collector has suggested that the Income Tax Officer, Nasik may be appointed as expert in matter of, loss of income and loss on account of the sale of furniture under sec. 19(1)(c) of Defence of India Act.

R.D. has decided to accept Collector's suggestion to appoint the Income Tax Officer as an expert to assist the arbitrator under Sec. 19(1(c) of the Defence of India Act. R.D. states that there is no objection to such an appointment , but R.L.A. is requested to advise

P.T.O.

It is not clear what legal difficulty is experienced by R.D. in appointing Income Tax Officer as an expert under s.19(1)(c) Under sec. 19(1(c), it is competent to Govt. to nominate a person having expert knowledge as to the nature of the property acquired to assist the Arbitrator and where such nomination is made the person to be compensated is also entitled to nominate an assessor for the said purpose. The section does not prescribe any qualifications which the expert should possess and hence it is open Govt. to nominate whomsoever it pleases as an expert, if in the opinion of Govt. he possesses expert knowledge as to the nature of the property acquired. In the present case, the expert is to aid in assessing the loss of income and the loss due to sale of furniture and if Govt. considers that an Income Tax Officer would be a person who would have expert knowledge about such matters, there can be no legal objection to his nomination.

K.D.D./4/3

A.S.

The facts are these-

The "Coronation Hotel" at Deolali owner by one Mr. H.C.H. Damania was requisitioned by the Collr. of Nasik under his Order No. L.N.D. 526, VI, dated 8-6-43 issued under sub-rule (1) of rule 75A of the D. of I. Rules. It appears that Mr. Damania claimed a total compensation of Rs. 24,460/- in respect of the requisitioned property, but the Collr. of Nasik by his Order No. L.N.D 526 dt 9-10-1946 awarded a total compensation of Rs.17,965/-. Being dissatisfied with the amount of compensation awarded by the Collr. Mr. Mrs. Damania have presented an application to Govt. requesting that the matter may be referred to arbitration for determining the amount of compensation. It may be pointed out that the said property was taken over by the military authorities on 28-7-43 and it was released from requisition on 10-10-46

Vide pp. 19-23 ante.

Vide p. 9 15 do-

pp.19-23-do

pp.3-7- Do-

Vide p.27 -Do

In his endorsement No. L.N.D. 526, dt 12-12-1946, the Collr. of Nasik recommends that the Civil Judge, Senior Division, Nasik (Mr. T.U. Kapturale) may be appointed Arbitrator under section 19(1(.) of the D. of I Act. 1939, and the Income Tax Officer, Nasik, may be appointed as expert in the matter of loss of income and loss on account of the sale of furniture under sec t 19(1)(c).

p. 17 Do-

The H.D. office remarks that in view of section 19(1) of the D. of I Act there does not seem any objection to the nomination of the Income Tax Officer, Nasik, Nasik, expert to assist the arbitrator.

It is evident that the "Coronation Hotel" was taken
p. 27 over by the Military authorities on 28th July 1943 and appears to have been released from requisition on 10th Oct. 1946, that is, after the expiration of the D. of I Act, 1939 and the rules made thereunder. It may be presumed that the property was released from requisition by an order made under section 4(1) of the Requisitioned Land (Continuance of Powers) Ordinance, 1946. It is pertinent to note that the order awarding compensation
p. 19-23- ante Rs.17,965/- in respect of the property was made by the Collr. of Nasik on 9-10-46, after the expiration of the D. of I Act and the rules made thereunder, and at this date the property was still under requisition. Section 6 of the Requisitioned Land (Continuance Powers) Ordinance, 1946, provides that where under this Ordinance any requisitioned land is continued under requisition for a period and is thereafter released from requisition or is acquired, compensation for such continued requisition and, as the case may be, acquisition of the land shall be determined and paid in accordance with the provisions of section 19 of the D. of I. Act, 1939 and the rules made thereunder, and for the purposes of such determination and payment-

(a) the said provisions and rules shall be deemed to be in force subject to the modification that references to section 19A of the D. of I Act, 1939, shall be construed as references to section 5 of this Ordinance.

(b) X X X X X

Since in the present case the requisitioned property was continued under requisition for a period and was released

P.T.O.

from requisition under section 4 of the said Ordinance, the compensation in respect of such Property would be determined in the manner prescribed by section 6 thereof. As the compensation determined by the Collr. In his order dt. 9.10.1946 has not been accepted by Mr. Damania and as he desires that the matter should be referred to arbitration,,under section 6 of the Requisition Land (Continuance of Powers) Ordinance, 1946, it as competent to Govt. to appoint under cl.(b) of sub-section(1) of section,19 of the D. of I act,1939 an arbitrator and under cl. (c) to nominate a person having expert knowledge as to the nature of the property requisitioned, to assist the arbitrator. If Govt. considers that the Income Tax Officer, Nasik, is person having expert knowledge as to the nature of the property requisitioned and as such suitable to assist the arbitrator, there is no objection to making such an appointment

If approved reply may be-
seen and returned.
The view expressed at A in the R.D. office note dated 20-2-47 is Correct."

Id/8/3

A.L.R.

I agree,Reply may be as proposed by A.S.

Sd/-R.T. Katarki
10/3/

R.L.A. Sd/- D.V.Vyas
13/3

U.R. to R.D. No. 2512 dated 22-3-1947

Kjr/14/5

4 C.

Submitted.

The relevant facts are these : A certain property belonging ~~holding~~ to Nandalal Bhandari Mills, Ltd., Indore., was requisitioned and the compensation payable in respect therefof having been mutually agreed upon an agreement was executed. A copy of the agreement is at pp. 21-22 ante. By clause (1) of the agreement it was provided that:-

> " The Government shall pay and the owners shall accept and receive a sum of Rs. 32,000/- in full settlement of the compensation for the land and structures."

By clause 3 owners' right to claim anything more than the amount fixed ~~was~~ was barred and by clause 4 it was further provided that :-

> "The owners shall meet and pay the revenue, rent, municipal taxes and all other out goings relating to the said property whether payable by the owners or the occupier thereof".

Then clause 6 want on to provide as follows:-

> "Should any dispute or difference arise out of or concerning the subject matter of these presents or any covenant clause or things herein contained or otherwise arising out of the requisition aforesaid appointed by Govt. and the decision of such arbitrator shall be conclusive and binding on the parties hereto. The provisions of the Arbitration Act, 1940 shall apply to such arbitration.".

There is no clause in the agreement about repairs but it appears that the authorities in charge of the property have carried out certain repairs and towards this expenditure they propose to deduct 5% of the gross rent. The owners of the property are unwilling to allow such a deduction (vide p.16 ante) and hence the papers have been referred to R.L.A. for advice or the following points:

(1) Whether the amount of compensation can be reduced in proportion to the amount spent in repairs- and

(2) Whether by virtue of clause b of the agreement compensation can berevised or the matter referred to arbitration without the consent of the owners.

By clause 4 of the agreement the owner has undertaken the liability to pay the revenue, rent, municipal taxes

and all outgoings relating to the said property. This liability will not include the liability to make repairs (vide Endt. by Solr. to Govt. No. 139 dt 8-1-1944 quoted in G.R.R.D., No.5883/39 dt. the 26th January 1944) and hence the liability for reparts will rest with Govt. which is liable to restore the property on derequisition in the same condition in which it was at the time of the requisition (cf. R.L.A's opinion No 2013, dated the 28th Feb. 1947). The cost of these repairs cannot hence be deducted by Govt. from the amount of compensation agreed to be paid under the agreement at p. 21 ante.

If the position above stated be correct then there is no reason to raise a dispute and hence the second question regarding calling in aid provisions of clause 6 of the agreement does not survive.

M.P.Rege. 21/4/47

A.S.

Attention is invited to the R.B. office note dated 26-3-1947. The R.L.A. is requested to advise whether any clause, especially clause 6, of the Agreement allows Government- p. 23 ante.

(i) to revise the compensation agreed to between the parties; and

or

(ii) to refer the matter to arbitration without the consent of the owners of the property having been obtained

The compensation payable to the owner of the premises requisitioned under rule 75^A of the D. of I. Rules had to be determined under section 19(1) of the D. of I. Act, 1939, either by an agreement or by arbitration (vide clauses (a) and (b). There is no provision in the D. of I. Act, 1939, or [illegible] made thereunder that where the compensat[illegible] agreement, the execution of an agreement [illegible] agreement is necessary as under [illegible]on 175 of the Government of India.

Mjr/14/5 4 C.

Office of the R.L.A.

There is no provision in the agreement empowering Government to revise the compensation fixed thereunder- Clause 6 of the agreement provides for reference to an arbitrator appointed by Government of any dispute or difference arising out of or concerning the subject matter of these presents or any covenant clause or things contained therein. Power to appoint an arbitrator vests in Government. Consequently the consent of the owners of the property would not be necessary to appointing an arbitrator to decide the dispute in the present case (see section of the Arbitration Act, 1940). I accept the opinion of the Solicitor to Government that the word "outgoing" does not include the cost of ordinary repairs. In view of the absence of any provision in the agreement regarding the liability of the owner to repair and the general covenant by Government to restore the requisitioned property in the same condition in which the premises were at the time of requisition it is doubtful whether the reference to arbitration will succeed (of section 116(m) of the Trnasfer of property Act).

Sd/- P.M.Lad
2/5/47
o.c. Remembrancer of Legal Affairs.

U.R. to R.D. No. 4529, dated the 3rd May 1947

Mjr/14/5

4 C.

Submitted

2. It appears that plot No. 49 of S. No. 23 of Sajjpur Sogha village in the City taluka, Ahmedabad belonging to Mr. Kuberdas Hargovinddas Mody was requisitioned under the Defence of India Rules. The owner is not agreeable to accept the annual rent offered and has submitted an application for reference to arbitration under section 19(1(b) of the Defence of India Act. The Collector of Ahmedabad in his letter at p. ante states that "cases relating to other similar plots of the applicant were referred by Govt in the Revenue Dept to the Arbitrator appointed under the Scheme of the India Rules (Act) for deciding the annual rent thereof This ultimately means that the question as to the decision of annual rent for Kurbenager plots has already been once settled by the arbitrator then appointed and it is now not necessary that this time also the same point should be referred to the arbitrator."

The Revenue Department's view is that- when a property is requisitioned or acquired under rule 75A of the Defence of India Rules 1939, compensation is to be paid either by agreement or by reference to arbitration. Neither section 19(1(b) of the Defence of India Act nor the rules made thereunder gives power to Government to withhold an application to arbitration.

The R.L.A. is requested to state whether the R.D. view is correct.

3. Regarding compensation to be paid for requisitioned and acquisitioned land under the Defence of India Rules section 19(1) provides that :-

"When under section 19A or by or under any rule made under this Act any action is taken of the nature described in sub-section (2) of section 299 of the Government of India Act, 1935 there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say:-

P.T.O.

(a) where the amount of compensation can be fixed by agreement, it shll be paid in accordance with such agreement.

(b) where no such agreement can be reached, the central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above mentioned Act for appointment as Judge of High Court."

It is therefore incumbant on Government to pay the compensation by agreement; And if agreement is not reached by arbitration. In the present case since agreement is not possible the compensation must be paid by reference to arbitration. The fact that the arbitrator appointed on the last occassion in cases of similar plots dismissed the application of the present applicant is not relevant since the land in reespect of which arbitration is sought has never been the subject of arbitration under the Defence of India Act and the application made in accordance with rule (1) of the Rules framed under section 19(2) and (3) of the Defence of India Act cannot be withheld. The R.D. view on page 2 is therefore correct .

Sd/- T.Y Vhaudhari
5/5

A.S.

The facts are stated in the letter from the Collecter of Ahmedabad and on para 2 of the above note.

Under section 3 of the Requisitioned Land (Continuance of Powers) Ordinance 1946, notwithstanding the expiration of the Defence of India Act, 1939 and the rules made thereunder and the repeal of the Ordinance no XIX of 1946, all requisitioned lands shall continue to be subject to requisition until the expiry of the Act and the appropriate Government may use or deal with any requisitioned Land in such manner as may appear to it to be expedient Sub section (1) of section 6 provides that in respect of the containued subjection of requisitioned land to requisition under this Act, or the Ordinance, compensation

The view taken by the Revenue Department is correct. Failing a settlement of compensation by agreement, reference to arbitration would be obligatory under clause (b) of section 19(1) of the Defence of India Act, 1939 and the fact that the owner did not get any relief in a reference to arbitration in respect of ~~not get any relief in a reference to arbitration in respect of~~ another similar land would be no justification for refusing to make a reference in the present case

Sd/- F.M.Lad
10/5/

O.C.
Remembrancer of Legal Affairs.

U.R. to R.D., No. 4815 dated the 12th May 1947

Mjr/15/5
4 C.

If no agreement on the quantum of compensation is reached, when so desired by the person to be compensated, Government is bound to refer the dispute to arbitrator appointed under section 19(1)(b) of the Defence of India Act, 1939. It is, not understood why such cases, which involve no question law, are referred to R.L.A by the R.D. The present reference to R.L.A is quite unnecessary.

Sd/- 10/5

A.L.R.

Compensation if, accepted under protest, does not mean compensation fixed by agreement under cl(a) of section 19(1) of the Defence of India Act 1939 Consequently reference to arbitration would be necessary . The view taken by R.D. is correct. Papers may be seen & returned.

Sd/- R.T.Katarki
10/5

R.L.A.

Sd/- P.M.Lad
10/5

U.R. to R.D. No. 4654 dated 13-5-1947

Mjr/15/5

4 C.

which are increasing daily on account of no interest charges on it. Since the order specifically states

Submitted.

A property situated at Juhu was notified for requisition for widening the existing flying gap at Juhu Aerodrome under the L. Acq. Act. But before it was finally acquired an agreement (p.23-27 ante) was entered into between the owner of the property and the Governor General in Council. Thereafter on 2nd May 1942, the Collector of B.S.D. issued an order under Rule 76 and 79 of the D.I. Rules by which the property was requisitioned for the Military use and a condition was laid down that ~~for~~ ~~the~~ the owner shall not dispose of the property without the permission of the Central or Provl. Govt. till the expiry of the period mentioned in condition No. 1 of the Requisition Order (p.21). Thereupon the Military obtained the possession of the property and paid Rs.200/- monthly as rent to the owner.

2. The land is still under requisition; and owner desires to sell it and utilise the sale proceeds in paying the debts. ^ that the owner shall not dispose of the without the permission of the Govt., the owner has made an application to the Collector to relax the condition. The Collector has endorsed the application stating that there is no objection to allow the owners to dispose of the property as the question of possession does not arise.

^ pl. see the Slip.

3. The C.S.D. R.D. is of the opinion that as in view of H.L.A's opinion No.5024, dated the 19th Jan.1942, only the possession and not any other interest vests with Govt. during the period of requisition there should be no objection to relax the condition at B on p. 21.

4. The papers are however referred to H.L.A. for advice on the question whether there is any objection to relax the condition

5. The condition prohibiting disposal imposed by the Collector reads as follows:-

"..... the owners or occupiers of any lands or building or structure thereon shown in the schedule below shall ~~xxxx~~ not without the permission of Central Govt. or the Provl. Govt. dispose of the land or building or structure or any interest therein till the expiry of the period mentioned in condition No 1 of the conditions specified below ..... "

The condition No.1 referred to above is in following terms:- "The land with buildings or structures thereon will be continued in possession of Military Authorities during the period of war and six months thereafter or such less period as Military circumstances require subject to six months notice."

Reading these two clauses together it is clear that the prohibition regarding disposal is co-extensive as reguards the period specified in condition No. 1 That period is already over and and it is not clear how the property is been kept by the Military beyond the period specified. As the period of possession was clearly specified, the property should have been de-requisitioned on the expiry of that period and as this was not done the legal position regarding Govt's possession of the property is anamalous. The possession of Military Authorities at present does not appear to be relatable to the Requisition Order which is now spent up on account of condition No. 1 . If this position is correct, then the clause prohibiting disposal is also inoperative and there is no question of relaxing it.

6. Before gibing a final reply however the R.D. may be requested to ascertain whether the condition specifying the period of requisition was modified subsequently and if not to clarify under what provisions the property kept under requisition for use of Military after the period was over.

Sd/- K.B.B 12/5

Mjr/15/5
4C.

Office of the R.L.A.

The period of prohibition to alienate without permission as provided in condition 1 of the requisition order has long expired and although requisition is continued under the Requisitioned Land (Continuance of Powers) Act, 1947 that part of the requisition order which precludes alienation without permission does not appear to have been saved by that Act. Further it is doubtful whether such restriction could at all be imposed on the owner of requisitioned lands when notwithstanding such requisition he could continue to enjoy other ordinary rights of owner ship. In the circumstance there appears no objection to relaxing the condition as prayed for by the owner.

Sd/- P.N.Lad
16/5
O.C. Remembrancer of Legal Affiars

U.R.to R.D., No. 5049 dated the 16th May, 1947

Mjr/15/5
4 C.

It is deplorable that the R.D. has not cared to obtain either the relevant papers or the proper information bearing on the question.

The facts, as stated in the letter from the Accountant p.1. ante. General, Bombay, are as follows:-

Four out of five buildings at the Altamount Road were occupied by the Military Authorities with effect from 14.8.1942 and the fifth one was occupied with effect from 1.12.1942. The rents of these buildings were fixed by mutual agreement between the owners and the Military Authorities, as a result of which the aggregate amount of rent settled was Rs.4,550/-. The payment of rent was accordingly made up to 13.1.1943 The Garrison Engineer (Hirings) however, considered that the rates of rent as mutually settled were exeessive, and with a view to having the rent reduced, he suggested that the said buildings be requisitioned. The buildings were accordingly requisitioned from 1-1-1943. It is stated that the rents fixed after requisition aggregated to Rs. 4550/- fixed by mutual 5335/- as against the previous total rent of Rs 4550/ agreement between owners and the Military Authorities. On these facts Accountant General, inter alia

P. 1. ante. states thus:-

"In view of the fact that the rents of the five buildings were already mutually agreed upon at the monthly figure of Rs. 4550/- it is not clear whether while the original agreement subsisted there was any case for requisitioning of the premises, and if so, whether it was a case of enhancement to Rs. 5335/- p. m. of the rent already agreed upon by both parties. I ..... request that Govt. may, if they see no objection, consult their legal advisers and ascertain whether in the circumstances stated above, the Govt. have any remedy or must pay the enhanced or extra rent as now fixed".

The question which arises for R.L.A's consideration is whether after the premises are requisitioned Govt. is obliged to pay the enhanced aggregate rent of Rs.5335/-.

Presumably, the premises in question were requisitioned under rules 75 A of the D of I. Rules. Under sub-section (1) of section 19 of the D. of I. Act, 1939, where under section 19 A or by or under any rule made under the Act any action is taken of the nature described in section 299(2)

of the Govt. of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles set out in clauses(a) to (g) Under section 19(1) , the amount of compensation may be fixed by mutual agreement and failing such agreement by arbitration, The Accountant General states: "The period from which rent at higher rate has been awarded is from 14.1.1943 to 16.9.1946". From this it appears that therents were fixed by the arbitr tor by making an award. This award being binding on both the parties, Govt. is bound to pay the rent at the rate fixed by the arbitr tor. The R.D. office view is ofx correct. The papers may be "seen and returned".

Sd/- 28/6

A.L.R.

It appears from the letter at p 3 ante that the owners disputed the validity of the requisitioning of the properties and desired that they should be paid the rent mutually agreed upon before requisitioning; but the fact that th e compensation has been fixed presumably under section 19(1) of the Defence of India Act goes to prove that the owners must have subsequently withdrawn their objection. At any rate it is clear that the compensation has been fixed by due process of law and is binding on b th parties and the fact thet it is more than the amount of rent mutually agreed upon before requisition is no valid ground for Govt. to avoid payment of the excess amount. Besides, the fact that by requisition Govt. became entitled to higher rights than those under the lease might xxxibilix possibly be the reason why the compensation was fixed at an amount higher than the rent. The view taken by R.D. is correct.

Sd/- R.T.Katarki 30/6

R.L.A.

R.D. View is correct

Sd/- D.V.Vyas 1/7

As at of A.S's note dated 23-6-47

U.R. to R.D. No. 6811 dated 2-7-1947

Mjr/15/5
4 C.

Submitted.

2. It appears that Messrs M/s Vasantrai & Co. 55, ~~Provinces~~ Princess Street, Bombay, imported a consignment of 200 lbs. of quinine sulphate on the 20th October 1946. This consignment was cleared from customs in December 1946 after furnishing an undertaking in accordance with Government of India, Department of Health Notification No. F 7-16/46-D. dated the 30th September 1946 Although the consignment was cleared the importers have not supplied 60% of the imported consignment to the Deputy Assistant Director General (Medical Stores) Medical Stores Depot, Bombay as required under condition (1) of the conditions of clearance to deliver this quantity to the said officer. The Government of India in the Health Department in their letter at p. ante, have therefore requested the Bombay Government, if they have no objection, to take steps to prosecute the firm under sub-rule (b) of rule 34 of the Defence of India Rules as continued in force by section 2(3) of the Emergency Provisions (Continuance) Ordinance, 1946 The H & L.G. Deptt. has shown these papers to H.D. and L.D. before forwarding the papers to the Commissioner of Police Bombay, for launching prosecution

3. Since the Government of India have requested that the prosecution may be launched it is not necessary to look into the merits of the case. Breach of condition(1) of the undertaking given by the firm in pursuance of the Government of India, Department of Health, Notification No. F 16/46-D. dated the 30th September 1946 is an offence punishable under sub.rule (6) of rule 84 of the Defence of India Rules (and not sub rule (b) of rule 34 as

p.t.o.

mentioned by the Government of India(in their letter) as continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946, which expired on 24-3-47; but in view of the said Ordinance the prosecution can be launched even at this state,(of R.L.A's opinion No. 2923, dated 26-3-47). The papers may therefore be "seen and returned" to the H. & L.G.D. with the following remarks:-

Breach of condition (1) of the undertaking given by the firm (p.3 ante) is an offence pubishable under sub.rule (6) of rule 84 of the Defence of India Rules. Messrs. N. Vasantrai & Co should therefore be prosecuted under this rule and not under rule 34(b) as stated by the Government of India in their letter at p. 1 ante.

Sd/- T.Y. Chaudhari
3/6/

D.S.
I agree
A.L.R.
Sd/- 4/6

Although rule 84, the order issued under which has been contravened by Messrs. N. Vasantrai & Co., has already expired it would be possible to prosecute the Company for the offence committed by it before the expiry of the Rule. A similar question as to whether offences committed under temporary Acts can be prosecuted and punished after the Act has expired arose for consideration before the Federal Court in Criminal Appeal I of 1947 (J.K.Gas Plant Manufacturing Co.) (Rampur) Ltd. vs, the King Emperor) and the Federal Court relying on the English Case of "Wicks v. Director of Public Prosecutions" held in the affirmative. In the English Case the offences charged against the appellant were committed between April 1943 and January 1944 and were offences against regulation 2A of the Defence (General) Regulations, 1939, made under the

Office of the R.L.A.

From the facts stat d in the Government of India's letter of 7-5-47 at page 1 ante it appears that the Company has committed an offence punishable under rule 84 of the Defence of India Rules and not under Rule 34(2) of the said Rules as stated by the Government of India. Rules 84 which was continued in force by the Emergency Provisions (Continuance) Ordinance, 1946, has now expired but in view of the recent ruling of the Federal Court in Criminal Appeal No. I of 1947 (J.K. Gas Plant Manufacturing Co.) Ltd. vs. the King Emperor) it would be possible (Rampur) to prosecute the Company for the offence committed by it before expiry.

Sd/- P.E.Lad
6/6/

O.C.
Remembrancer of Legal Affairs.

U.H. to H. & L.G. Deptts., No. 249-Confl. dated the 6th June 1947

Mjr/15/5
A C.

dential
Urgent.

No. 1883/33/385-D,
Health & Local Government Department,
Bombay Castle, 26th June 1947

To.

The Commissioner of Police, Bombay.

Subject :- Prosecution
Messrs. N. Vasantrai & Company, Bombay for breach of undertaking furnished under Defence of India Rule 84 for disposal of Q-uinine consignment.

The documents mentioned in the margin are enclosed with a request that you will be so good as to prosecute Messers No. Vasantrai & Company for breach of condition (1) of the under taking furnished by the firm under Defence of India Rule No. 84 in connection with disposal of a quinine consignment. The exact date of the clearance of the quinine consignment, as reported by the Collector of Customs, Bombay, is 7th January 1947.

(1) Letter from the Government of India, Department of Health, No.F. 5-124/46-D, dated the 7th May 1947 and its accompaniment (to be returned please).

(2) Copy of the Remembrancer of Legal Affairs' opinion, No 294-Confl, dated the 6th June 1947

2. Please report to this Department the result of the prosecution for communication to the Government of India. Your attention in this connection is invited to this Department letter No. 1883/33/181-D, dated the 6th April 1948

Sd/-K.B.Kazath
Deputy Secretary to the Government of Bombay,
Health & Local Government Department.

Confidential

No. 1883/33/385-D.
Health & Local Government Department,
Bombay Castle, 26th June 1947.

Copy (without accompaniment) forwarded to --

the Surgeon General with the Government of Bombay,
the Deputy Assistant Director General (Medical Stores), Bombay
the Home Department,
the Legal Department

for information.

for

By order of the Governor of Bombay,
Sd/-
For Deputy Secretary to the Government of Bombay
Health & Local Government Department.

Mjr/15/45
4 C.

Submitted

2. Please see this office note on p. 12 ante. The C. D. has now forwarded the relevant papers.

3. It appears that Mr. Apaji S. Patel, Importers, Exporters, 9 Alakapuri, Baroda, imported a consignment of 100 lbs. of quinine sulphate and has signed on the undertaking making him liable to penalties prescribed in rule 84(6) of the Defence of India Rules in the event of breach of the conditions laid down in Department of Health, Government of India's Notification No. F-16/46-D, dated the 30th September 1946 as amended by notification No.F.7/16-46-D(II), dated the 20th November 1946. This notification provides that the clearance of consignment is subject to certain conditions. Condition (1) thereof provides:

> "That 60% of the quantity imported shall be handed over to the Deputy Assistant Director General (Medical Stores), Medical Store Depot at Madras, Bombay, Calcutta or Lahore as the case may be for which the importer will be paid by the Central Government at landed cost plus 7½ per cent thereof or the maximum wholesale price mentioned in (3) whichever is less."

Condition (2) thereof provides:

> "That the remaining 40% of the quantities imported may at the discretion of the importer be handed over to the same authorities and on the same terms as those ~~expressed~~ of specified in(1) above, or alternately be disposed of by sale, through the usual channels or directly to such institutions or individuals as may from time to time approved by the Central Government."

Mr. A.S. Patel has objected to the delivery of 60% of the consignment on the payment of the maximum wholesale price and claims that the landed cost plus 7½% which comes to more than the maximum wholesale price should be paid. The Government of India consider that they are not bound to pay more than the maximum wholesale price mentioned in the said notification and request this Government to prosecute Mr. A.S. Patel for

P.T.O.

breach of conditions (1) and (2) thereof. Before the papers are forwarded to the Commissioner of Police for launching prosecution they are shown to this Department

3. Since the Government of India has requested that the prosecution may be launched it is not necessary to look into the merits of the case. Breach of conditions (1) and (2) of the conditions of Health Notification No. F 7-16/46-D, dated the 30th September 1946 is an offence punishable under sub-rule (6) of rule 84 of the Defence of India Rules as continued in-force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946 which expired on 24-3-1947; but in view of the provisions of section 2(3) of the said Ordinance the prosecution can be launched even at this stage (Cf. R.L.A's opinion No 2923 dated the 26th March 1947). All offences under the Defence of India Act, 1939 or against the rules made thereunder are declared to be extradition offences for all Indian States (vide G. of I. External Affairs Deptt. Notification No. 126, dated 6.8.1940). The papers may therefore be "seen and returned

Sd/- T.Y.Chaudhari.
3/6/

D.S.
I agree
Sd/-
4/6

R.L.A.

Mjr/15/5
4 C.

Attention is invited to R.L.A's opinion in the linked case. The expiry of the defence of India Rule 84 under which Mr. Patel seems to have committed the offence will not stand in the way of his prosecution

Sd/- P.M.Lad
6/6

O.C. Remembrancer of Legal Affairs

U.O. to H. & L.D. Deptt., No 250-Confl dated the 6th June 1947

MJr/16/5/

4 C.

Confidential.
Very Urgent.

No. 1883/33/386-D,
Health & Local Government Department,
Bombay Castle, 26th June 1947

To.
The Commissioner of Police, Bombay.

Subject:- Prosecution
Mr. Apaji S. Patel.
Prosecution of, for breach of conditions (1) and (2) of the conditions of release signed by, in connection with a quinine consignment.

The documents mentioned in the margin are enclosed with a request that you will be so good as to prosecute Mr. Apaji S. Patel for breach of the conditions (1) and (2) of the conditions of release signed by him in connection with the quinine consignment imported by him in November 1946.

(1) Letter from the Government of India, Department of Health, No.F. 5-84/46-D. dated the 5th April 1947 and its accompaniments (to be returned please).
(2) Copies of the letter from the Collector of Customs, Bombay, Confl. C.No. 2358/46, dated the 19th May 1947 and of its accompaniment.
(3) Copy of the Remembrancer of Legal Affairs' opinion No 250-Confl., dated the 6th June 1947 with a copy of the opinion referred to therein No 249-Confl., dated the 6th June 1947.

2. Please report to this Department the result of the prosecution for communication to the Government of India.

Sd/- K.B.Kamat,
Deputy Secretary to the Government of Bombay
Health & Local Government Department,

Confidential.

No. 1883/33/386-D.
Health & Local Government Department
Bombay Castle, 26th June 1947

Copy (without accompaniments) forwarded to ---

the Surgeon General with the Government of Bombay
the Deputy Assistant Director General (Medical Stores), Bombay
the Home Department,
the Legal Department

for information

By order of the Governor of Bombay,

Sd/-
For Deputy Secretary to the Government of Bombay
Health & Local Government Department.

Mjr/15/5

4 C.

Submitted

Please see Under Secy R.D's note at pp. 71-74 ante and that of Secy R.D thereunder at p. 74. The facts in brief are these : In his opinion No. 3505, dated the 11th April 1947 (at.p. 57 ante), R.L.A. advised that there was a prima facie good case for prosecuting Khan Saheb Ramzanally Jamalbhai for contravening the order of Govt. under Rule 81(2)(b)(iii) of the Defence of India Rules. In view of this opinion, investigation was started by the City Police and all inquiries in the matter are now complete. (vide Crime Report at slip A below). The accused Khan Saheb Ramzanally Jamalbhai has now approached Govt. with a request to drop his prosecution in consideration of his letting to a Govt. nominee a flat in his premises and dropping, on his part, all the threatened proceedings in respect of flat No. 5 (vide p. 67 ante). From R.D. notes, it appears that Govt. in that Dept. is inclined to accept the compromise proposal. In the last para (No.8) of his note Under Secy; R.D. observes:-

"If the compromise suggested by the applicant, as above, is accepted by Govt., orders may issued that the criminal suit that was proposed against the applicant may be withheld till such time as he hands over vacant possession of flat. No. 4 i.e. by the end of this month. The compromise proposal itself, come as it does, voluntarily from the applicant will perhaps estop him from lauching any civil proceedings. The legal position may also be got examined from the Legal Department by an unofficial reference."

The matter has thus been referred to R.L.A.

An offence under Rule 81(2(b)(iii) of the Defence of India Rules, 1939 is not compoundable and hence any agreement, ~~1939xiaxnotxes~~ the effect of which is to compound that offence, is illegal Kandan Chetti v. Coorgee Seit (1879 I.L.R. 2 Mad, 167; Keesowaji Tulsidas v. Hurjivan Kulji

P.T.O.

and Shamkuvarbahu (1887) I.L.R, 11 Bom. 566). Obviously, therefore, the compromise will not estop Khan Saheb Ramzanally from proceeding with his threatened suit in respect of flat No. 6 but, in all probability, Khan Saheb can never think of such a course as it will be competent to Govt. to institute the criminal proceedings as a counter threat. In the circumstances, there does not appear any objection to accept the offer of Khan Saheb if Govt. in R.D. considers such course the best solution in the matter.

Sd/- Rege
14/6/

A.S.

There appears no objection to the course proposed by the Secy R.D. in his rule of 4-6-47. The papers may be "seen and returned".

Sd/-
16/6

A.L.R.

I agree

Sd/-
R.T.Kartarki
16/6

R.L.A.

Sd/- P.M.Lad
16/6

U.R. to R.D. No. 6257 dated 17-6-1947

Mjr/15/5

4 C.

This question was considered by the R.L.A. in his opinions No. 6048, dated 26-8-1946 and No. 9494 dated 18-12-1945. In his opinion at p. 3 the P.P. has considered the question in all its bearing.

It is true that the instance of a joint Hindu Family quoted by Mr. Sabnis Presidency Magistrate in his judgment bears no analogy to "Guruka Langar" which is essentially a religious function within the meaning of F.D. (Supply) Notification No 390/FAC/VI dated 6-3-1946, But what is more necessary to prove the breach of that notification is that-

(a) at "Guruka Langar" some person or person either himself or themselves or through an agent or agents served distributed or provided or accepted or contributed for service or distribution for consumption any food grains etc. and

(b) the number of persons thus served was more.

The conveners of "Guruka Langar" can therefore be prosecuted only if it can be proved that they either themselves or through their agents served, distributed or provided for consumption or accepted or contributed for service or distribution or consumption any foodgrains, eatables etc. Mr. Sabnis took the view that "the person distribution or serving the food cannot be held to have contravened the notification because he had distributed to the persons what really belongs to them or what was really brought by them to the common pool". His view appears quite reasonable. Service, distribution or provision for consumption of foodgrains in the first part of the notification appears to contemplate that such foodgrains do not belong to

person who have been served. In the latter part of the notification even acceptance or contribution of foodgrains for service or distribution is ~~xx~~ an offence. Consequently those who accept as well as those who contribute for such service or distribution of foodgrains would be liable under the notification. In the case decided by Mr. Sabnis the main charge against the accused was one of distribution of foodgrains eatables etc. The accused were not prosecuted for acceptance of foodgrains nor for contribution of such foodgrains. Since every person brought his own ration enough for himself he might contend that he did not contribute for service of food to others & consequently the prosection of those who brought rations and contributed to the common pool may fail. But those who accepted foodgrains may not be able to escape. Consequently the Police may be advised to prosecute only those who accept contribution of foodgrains as main offenders and the converners as abettors.

Sd/- R.T.Katarki
19/5

R.L.A.

The warding of the Order No. 390/F.A.C./VI dated 8-3-1946 is quite adequate to cover the case of all these who are likely to be associated with "Guruka Langar" in any capacity as per example, ~~xxx~~ distributors or contributors & acceptors of foodgrains & ~~c~~atables etc. The words in paranthesis at the end of clause 1 viz " including the persons" etc. were designed to

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The wording of the Order No. 390/F.A.C./VI dated 8-3-1946 is quite adequate to cover the case of all those who are likely to be associated with "Guruka Langar" in any capacity as for example, distributors, contributors and acceptors of foodgrains and eatables etc. The words in parenthesis at the end of clause viz. "Including the persons" etc. were designed to prevent the very tactics adopted by the Sikhs organising the Langar.

2. However, in a case where persons were prosecuted for accepting for distribution and also for distribution, in connection with Guruka Langar, the Magistrate took the view that these tactics do not come within the mischief at which the Order aims. The general reasoning of which he gave some illustrations applies equally to functions; and that reasoning is that individuals pooling together their own foodstuffs etc. and eating them in common are not guilty of any substantial violation of the Order. The Government Pleader's letter at p; 119 shows that the High Court, while refusing to entertain an appeal against the Magistrate's decision in substance endorsed that reasoning; for Mr. Justice Gajendragadkar is reported to have said that the accused /may have broken the law in the letter, but that it was not necessary to pursue the matter further. That would seem to be the view of commonsense; and so long as that view prevails no useful purpose would be served by launching another prosecution and inviting a reiteration of that view by the High Court which might prove embarrassing for other cases of a non-religious nature. In these circumstances, a prosecution does not seem expedient.

P.T.O.

It is a matter for Government's consideration whether in view of the repeated strong recommendations made by the Commissioner of Police, the practices should not be regularised by issuing a permit imposing restrictions for minimising the consumption as much as possible.

Sd/- P.M.Lad
21/5/

o.c.
Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 5238 , dated the 22nd May 1947

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4 C.

It appears that certain stalls in the Rajanagar Vegetable Market, Ahmedabad were requisitioned by D.M., Ahmedabad, in 1944-45, under rule 75-A of the Defence of India Rules and rented to certain associations and wholesale dealers. By R.C.D. letter No. 44(4)/1426, dated the 14th May 1947 Government directed the D.M., Ahmedabad to derequisition all the stalls except stalls Nos. 4,5, 18 and 19 and godown No. 20 with effect from 1st June 1947, and to return them to persons from whom they were requisitioned. In his letter No. M.S.C. 237/VOI, dated the 7th June 1947, the D.M. observes:-

> "Accordingly I passed orders derequisitioning the stalls from 1-6-47. The Marketing Officer who had been directed to hand over possession of the derequisitioned stalls on 1-6-47, reported that there would be great opposition to the return of possession to the persons from whom these stalls were requisitioned and that a Police bundobast was necessary to prevent a clash.
>
> I am not all certain that any such action (i.e.handing over possession to the parties with the aid of Police bundobast) on my part will be legal. It might seem that the only power I have is to pass a formal order de-requisitioning the land authorising persons from whom they were requisitioned to take possession. If physical resistance is offered to any attempt to hand back possession of thestalls to the persons lawfully entitled after the derequisition, it would seem that the only remedy is the filing of suits against parties who held the stalls under requisition and any attempt to oust them by use of police force would be illegal. It may also be possible to prosecute the present holders of stalls who refuse to hand over possession for criminal trespass, though this is dubious".

H.M. (C.S.) has directed the R.L.A. to submit his opinion on the points raised by the D.M., Ahmedabad and desires to know the provisions of the Defence of India Rules regulating the derequisitioning.

The points raised by the D.M., Ahmedabad ,are:-

(1) Whether it is obligatory on Government to restore to the original owner vacant possession of derequisitioned premises; if so.

(2) whether the persons in possession of requisitioned premises can be forcibly evicted; if not;

(3) whether such persons can be prosecuted for criminal trespass for remaining in possession of the derequisitioned premises.

Section 19-D of the Defence of India Act, 1939, contained provisions regulating the derequisitioning of the premises requisitioned under rule 75-A of the Defence of India Rules, 1939. On 1-10-1946, the

Defence of India Act, expired but the requisitioned lands were continued by the Requisitioned Land (Continuance of Powers) Ordinance, 1946, which by section 4 provided similar provisions for derequisitioning. The Ordinance expired on 24th March 1947, on which date the Requisitioned Land (Continuance of Powers) Act, 1947, was brought into force: Section 4 of that Act, which regulates release from requisition provides:

> "(1) where any requisitioned land is to be released from requisition, the appropriate Government may after making such inquiry, if any, as it considers necessary, specify by order in writing the person to whom possession of the land shall be given.
>
> (2) the delivery of possession of the requisitioned land to the person specified in an order made under sub-section (1) shall be a full discharge of the Government fro m all liability in respect of such delivery, but shall not prejudice any rights in respect of the land which any other person may be entitled by the process of law to enforce against the person to whom possession of the land is so delivered.
>
> (3) where the person to whom possession of any requisitioned land is to be given cannot be found etc.
>
> (4) where a notice referred to in sub-section (3) is published etc."

The words "delivery of possession", in sub-section (2) read with condition 3 of the requisition order providing for the restoration of the property as far as possible in the same condition in which it was when requisitioned means delivery of actual and not constructive possession. Consequently Government would be required to restore vacant possession of the derequisitioned premises to the person of persons from whom they were requisitioned. (cf. R.L.A's opinions Nos. 6350, dated 27-8-1945 and 7556, dated 12-10-45)

So long as the Defence of India Act, and the Rules thereunder were in force it was legally possible for Government to take action under rule 132 for forcibly evicting persons in possession of requisitioned premises for the purpose of restoring them on derequisition to the owners. Now that the Defence of India Act, and the Rules have lapsed, it would not be possible to evict persons in possession of de-

re-quisitioned premises save by due process of law. Consequently Government will have to take steps to evict the persons from the derequisitioned premises thorugh Court in case Government is unable to secure their possession peaceably.

To prove the offence of trespass under section 441 against the persons in possession of derequisitioned premises what is necessary to establish is that these persons having lawfully entered into or upon the premises unlawfully remained there with intent thereby to insult or annoy any such person (i.e. any person in possession) or with intent to commit an offence. It is true that these persons lawfully entered into or upon the premises; but unless Government put some other person or persons in possession of these premises, they cannot be said to have unlawfully remained there with intent thereby to intimidate etc. Nor can they be said to have so remained with intent to commit an offence. Consequently the persons who refuse to ~~evate~~ vacate the derequisitioned premises cannot be prosecuted for the offence of criminal trespass.

Sd/- D.V.Vyas.

o.c. Remembrancer of Legal Affairs.

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8004
7.7.47

Submitted.

2. It appears that the Government of India have appointed the Civil Judge, Senior Division, Thana as arbitrator under sec.19 of the Defence of India Act to determine the amount of compensation payable in respect of the properties known as Mulji Meridas Mills, requisitioned under rule 75-A of the Defence of India Rules. The Government of India in their letter of p.1 ante, state that they have been advised that a change of arbitrator in this case is necessary and that if the Bombay Government agree, the Government of India propose to appoint Mr. Noronha, Chief Judge, Small Causes Court, Bombay in place of the Civil Judge, S.D. Thana. They therefore request that the Bombay Government will accord their concurrence to this proposal and issue necessary instructions to the Chief Judge S.C.Court and C.J. (S.D.), Thana and if necessary obtain the latter's resignation. The R.D. considers that "since the Central Government had issued orders appointed the C.J.(S.D.), Thana as arbitrator that Government may issue similar orders appointing the C.J. S.C., Court, Bombay. Instead of obtaining the resignation from C.J.(S.D.), Thana, it would be better if the Govt. of India cancel their order appointing him as an arbitrator and issue fresh orders appointing the C.J. S.C.Court, Bombay as an arbitrator."

R.L.A. is requested to state whether the R.D. view is correct.

3. It is not stated as to when the order appointing the C.J.(S.D.) Thana as arbitrator was issued, But whether it is issued before or after the coming into force of the Requisitioned Land (continuance of Powers) Ordinance, 1946 the payment of compensation now will be governed by section 6 thereof. The said section 6 continues in force section 19 of the Defence of India Act, 1939 and the rules made thereunder . The power

P.T.O.

under section 19(1)(b) of this Act of appointing an arbitrator would include power to cancel the order appointing the arbitrator (Sec 21 of the General Clauses Act, 1897). and there is no legal objection to the course proposed by the R.D. since R,D. has accepted the Government of India's proposal to appoint the Chief Judge, Small Causes Court Bombay, there is no harm in issuing necessary instructions to the C.J. (S.D.), Thana and the C.J.S.C. Court, Bombay as requested by the Government of India.

Sd/- T.Y.Chaudhari
10/7/

A.A.S.

Pl. ontain the file referred to in the R.D. Office note

Sd/-
10/7

Submitted.

2. File No s/23/19/6891/40153/ has been informally obtained and is put up herewith.

Sd/- T.Y.Chaudhari
10/7/

A.S.S.

(I do not agree).

In consultation with the Govt. of Bombay, by their letter No. Cd/2/S.S./(60), dt 19-10-46, the Govt. of India (Deptt. of Industries and Labour) appointed the Civil Judge (Senior Division) Thana, as Arbitrator under sec. 19 of the D. of I. Act, 1939, in connection with the assessment of compensation payable in regard to the requisitioned property known as Kulji Haridas Mills, Kalyan. A copy of the said letter was addressed by the Govt. of India both to the owners and the tenants of the property. The Govt. of India have since been advised that a change of Arbitrator is necessary, they inter alia observe as follows:-

Slip B in R.D. papers below p.35 do Slip

"It is, however, considered doubtful, in view of the

Section 46 of the Arbitration Act, 1940 provides: "The provisions of this Act, except sub-section(1) of section 6 and sections 7,12,36 and 37 shall apply to every arbitration under any other enactment for the time being in force as if the arbitration were pursuant to an arbitration agreement exception in so far as this Act is inconsistent with that other enactment or with any rules made thereunder".

In the present case the reference to arbitration for fixing compensation has been made under clause (b) of section 19(1) of the Defence of India Act, 1939, and neither that Act nor the rules made thereunder contain any provision prescribing the procedure for withdrawing the proceedings from the arbitrator and referring the matter to another arbitrator. Consequently the provisions of the Arbitration Act in so far as they are relevant for the purpose and not inconsistent with the provisions of section 19 of the Defence of India Act and the rules will apply. Under clause (b) of section 8(1) read with section 19(1) of the Defence of India Act if the arbitrator refuses to act, Government can appoint another arbitrator. Consequently the Civil Judge, Senior Division, Thana may be asked to resign his appointment as arbitrator and on his resignation the Central Government would be competent to appoint Mr. Noronha, Chief Judge, Small Causes Court, Bombay, as arbitrator.

Sd/- D.V.Vyas

O.C. Remembrancer of Legal Affairs.

U.R..to R.D., No. 7349, dated the 17th July 1947

Mjr/15/5

4 C.

Submitted.

2. The Government of India Defence Department in their letter at p. 1 ante state that a notice from messrs. Merwanji Kala Nad Co. Solicitors, Bombay on behalf of their clients Messrs. B.H. Bhivandiwala and Co., has been received and that arbitration order in respect of the motor launch "Hormaz" may be issued under rule 96 (2) of the Defence of India Rules read with sub-section (4) of section 1 of the Defence of India Act. They have forwarded a statement of the case (pp.3-5 ante) and request this Government to arrange for the disposal of the case by an arbitration. The Home Department has therefore taken up the matter in hand. But they are not sure whether such an arbitrator can be appointed because they are confronted with the difficulties (p. 27 ante) that -

(i) The Requisitioned Land (Continuance of Powers) Act, 1946 is not applicable to the present case; and

(ii) That they are not aware of any legislation on the lines of rule 96(2) of the Defence of India Rules which has now become defunct;

The H.D. therefore considrs that the arbitration order cannot be issued under rule 96(2) as desired by the Govt of India. The R.L.A. is requested to state whether this is the correct legal position before that Department gives a reply to the Government of India.

3. The question for consideration of the R.L.A. is whether an arbitrator can be appointed under rule 96(2)of the Defence of India Rules which is now defunct.

It appears from the statement of the case (pp.3.5) that the motor launch "Hormaz" was delivered to the R.A.F on the 15th September 1942 and was subsequently requisitioned by the N.O.i/c, Bombay on behalf of the Central Government under his requisitioning order No 2807/NO B, dated the 31st October 1942. The copy of this order is not among the papers forwarded to the R.L.A. but presumbaly it must have been issued under rule 66 of the Defence of India Rules for which compensation was payable under rule 96 before the expiry of the Defence of India Act and (P.T.O.

the rules made thereunder.

Section 1(4) of the Defence of India Act as amended by the Defence of India (Second Amendment) Ordinance, 1946 (XII of 1946) provides that

"It shall be in force during the continuance of the present war and for a period of six months thereafter but the expiry under the operation of this sub-section shall not affect-

(a) the previous operation of or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule; or

(b) any right, privilege obligation or liability acquired, accured or incurred under this Act or any rule made thereunder or any order made under any such rule,

(c) x x x

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as foresaid; xxxx

And any such investi-gation, legal proceedings or remedy may be instituted, continued or enforced, or any such penalty, forfeiture or punishment may be imposed as if this Act had not expired."

In Re Thiagrayan Chettiar (1946) F.L.J. 104 on p. 109 wherein the question regarding continuance of prosecution for offences committed prior to 30th Sept. 1946 under the Defence of India Rules was considered Happell J. held that-

The 'things done or omitted to be done" (in section 102(4) of the Govt. of India Act 1935) are not stated to be things done or omitted to be done' under a law'. They are stated to be things done or omitted to be done before the expiration of the law. As regards these things sub-section(4) provides that the law shall continue to have effect after the period when with respect to other things the law has expired, and it seems to us, on a reasonable construction that the things done or omitted to be done before the expiration of the period of six months after which the proclamation has ceased to operate are things to which the law applies so that the law will continue to apply after the expiration of the period things done or omitted to be done to which it applied before the expiration of the

Office of the R.L.A.

The view taken by the Government of India in their letter at page/1 ante is correct. Although rule 96 of the Defence of India Rules has since expired it is saved for certain purposes by sub-section(4) of section 1 of the Defence of India Act. Clause (b) of section 1(4) saves a 'right or privilege accrued ~~accrued~~' under the Act and Rules. If a right has vested already, then it is saved. When a temporary Act expires, everything which is being done or continued under it does not necessarily come to an end. A right may have been acquired which may continue indefinitely. (cf. Spencer v. Hooton- (1841) 8 Monson and Welby, p 234 at 241). The owners would still be entitled to claim compensation under rule 96(1) in respect of their motor launch which was requisitioned. Consequently there is no legal objection under rule 96(2) of the Defence of India Rules read with sub-section (4) of section 1 of the Defence of India Act.

Sd/- P.M.Lad
29/5

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Remembrancer of Legal Affairs.

U.R & H.D. No. 5707 dated 30th May 1947.

Mjr/15/5

4 C.

Submitted.

The proceedings in these papers started on the application of one Mrs. Melitta Erber stating that she was required to vacate in June, 1942 room no. 7 on the 5th Floor of Chhottu Terrace, Colaba as the landlady gave her notice on the ground that Military was taking over the building and requesting Govt. to advise her if she is entitled to get back her former room. The Collector of Bombay in his letter at p. 7 ante states that he had not requisitioned the said room but it may have been hired by mutual agreement by the Defence Department. The R.D. considers that under these circumstances, it becomes a matter between the landlord and tenant and Govt. cannot interfere. In the R.D. note it is further stated that

> "The question is however whether in case the flat is hired by the Defence Deptt. the tenant has a right to be restored his old flat by the owner after it is de-hired. The R.L.A. may be requested to advise in the matter. In this connection attention is invited to the opinion of the Advocate General No. 32 dated 17th December, 1945".

The liability of Govt. to give vacant possession, eit er to the tenant or landlord arises only when the properties were subject to requisition - ing. If the properties were hired by the Defence Deptt. the status of Government will be as that of any other tenant and the relations between the Land Lord and Government will be governed either the Bombay Rent Restriction Act, 1939 or the

P.T.O.

Bombay Rents, Hotel Rates and Lodging House Rents (Control) Act, 1944 as the case may be. Under neither of these two Acts there is any obligation on a tenant or even the landlord to give vacant possession to the ex.tenant when a subsequent tenant vacates the flat. When a new tenancy beings there is an end of the old tenancy if any, and as such all rights and obligations of the original tenant come to an end. In these circumstances, it is difficult to see the relevancy of the R.D. question. Advocate General's opinion No.32 dated the 17th December, 1946 explains the legal position of tenancy when the premises were under requisition; and it does apply to the present case.

Sd/- T.Y.Chaudhari
21/2/

A.A.S.

The facts are these.

One Mrs. Melitta Erber was occupying as tenant Room No. 7 on the fifth floor of "Chhotu Terrace". On 27-5-1942, she was served with a notice as follows:-

"Your are aware that the Govt. has taken up from the 1st June next the Chhota Terrace property except ground floor shop for military purposes and you have ~~been floor shop for military purposes and you have~~ been served with the usual notices to vacate the same at the end of the current month. I have received another notice from the Station Staff Officer reminding me that the possession of the property will be taken by him on the 1st June.

I have therefore, to request you to see that the portion of the premises let to you is vacated as required by my notice without fail in order to enable the Military

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Office of the R.L.A.

The Advocate General's opinion No. 32 of 1945 cited by the Revenue Department relates to the rights of tenants of requisitioned premises and consequently it can have no application to present case. If the premises were hired by the Defence Department the previous tenancy of these premises must have been either terminated or surrendered. If so, such previous tenant can have no right to be restored possession after the premises are dehired by the Military Department.

Sd/- D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D. No. 7670
Dated the 25th July 1947

Hjr/16/5

4 C.

Submitted

2. By Notification in the Finance Department (Supply) No. 47(2)/II, dated the 15th April 1944 issued under rule 81(2) of the Defence of India Rules, Govtk. ordered that no person shall sell or offer for sale gram in wholesale quantities in excess of one Bengal Maund (among other district) in the West Khandesh District at rates higher than Rs.10-12- per B.M. The proviso to this order empowered the District Magistrates to fix special rates in cases of sale in wholesale quantities to licensed retailers by Government or by licensed wholesale dealers under the Foodgrains Control Order. In pursuance of the power conferred by the said proviso the District Magistrate West Khandesh by his Order No p -13-12(1)R19, dated the 18th May 1944, directed that with effect from that date no person shall sell or offer for sale gram in wholesale quantities in excess of one Bengal Maund at any place in the said District a a rate higher than Rs. 29 per local maund of 32 champas or uncut Bombay paylees by measure. The proviso to the Collector's order is to the effect that "nothing in this order shall apply to sales in wholesale quantities by licensed wholesale or retail dealers or by authorised agents of Government"

p. 43 ante

It appears that the Mamlatdar of Nawapur, in the West Khandesh District has directed to stock holders of gram etc. to sell gram to Government at rates fixed by Government i.e. Rs.10-12- per Bengal Maund. In the two representations one by the President, Merchant's Association, Dhulia and another from the Nawapur, Foodgrain licentiate Merchants' Association, Nawapur West Khandesh, it is urged among other points that -

(a) the existing ceiling price regarding gram should raised because on the assumption that there was no price control purchases have been made by them from cultivators at rates ranging from Rs. 15 to 21 per maund;

(b) the rates in B da state territory which surronds

are about Rs. 20 per maund and that they will suffer losses if they sell it to Government at Rs. 10-12

It is stated that in a letter alleged to have been issued from the D.M. West Khandesh's office on 31-1-1947 to one Mr. Jenakilal Jagannath of Dondaicha in the West Khandesh District he was informed that the rates of gram and gram dal are not controlled. And on this assumption it is stated the merchants purchased grams at higher prices. So also relying on the proviso to the District Magistrate's order dated 18-5-1944 by which sales in wholesale quantities by licenced wholesalers and retailers are specifically exempted from the prices fixed therein the merchants purchased at higher rates.

The D.C.S.(D) in his note on p- 57 ante, observe that:-

"The proviso to the Collector's order of 16-5-1945 was clearly misconceived. The question is whether it has legal validity when considered vis-a-vis the proviso to the Govt. Order of 15-4-44. The latter permitted to D.M., to exempt from the operation of the order sales in wholesale quantities made to licensed retailers by Government or licensed wholesalers, only when the D. Ms. specifically prescribed special prices. As no special prices were prescribed by the D.M. it follows that all sale transactions were subject to the substantive portion of the Government Order and that the proviso to the Collector's order was therefore invalid."

The Supply Commissioner has referred the papers to the H.L.A. for advice on the point raised by the D.C.S.(D) above
3 Govt. had fixed the prices of grain by F.D. (Supply) Order, No. (2)II, dated the 15th April 1944, at Rs. 10-12-0 The proviso to this order empowered the District Magistrates to fix special rates in cases of sales in wholesale quantities to licensed retailers by Government or by licensed wholesale dealers under the Foodgrains Control Order. The D.M., W.K.'s Order dated 18th May 1944 purports to have been made in exercise of the powers under rule 81 of the Defense of India Rules and the proviso to Govt. Order dated 15th April 1944. This order fixes the prices of gram in cases of sales in wholesale.

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By F.D. (Supply) No. 47(2)/II, dated 15th April 1944 Government passed an order under rule 81(2) of the Defence of India Rules that "no person shall sell or offer for sale gram in wholesale quantities i.e. in quantities in excess of one Bengal Maund (of 82/2/7 lbs.) in the districts specified in column 1 of the Schedule appended thereto at rates higher than those respectively specified against them in column 2 thereof:

Provided that in any area in which the District Magistrate may so order, sales in wholesale quantities may be made to licensed retailers by Government or by licensed wholesale dealers under the Food-grains Control Order at special rates to be prescribed the District Magistrate and nothing in this order shall apply to such sales."

The controlled rate of gram in West Khandesh district was fixed at Rs. 10-12-0 per Bengal Maund of 82/2/7 lbs.

Instead of fixing rates of gram in respect of sales to licensed retailers by Government or by licensed wholesale dealers as provided in the proviso to the aforesaid Government order, it appears that the D.M., West Khandesh passed an order No. 5-23-12(1)/19, dated 18th May 1944 under rule 81(2) of the Defence of India Rules fixing the wholesale ceiling price of gram at Rs. 29 per local maund of 32 champas or current Bombay Paylees by measure (which rate it appears is equal to the rate fixed by the aforesaid Government order) and added the following proviso to that order:

"Provided that nothing in this order shall apply to sales in wholesale quantities by licensed wholesale or retail dealers or by authorised agents of Government."

The Director of Civil Supplies in his note at pages 57-59 observes:-

"The proviso to the Collector's order was clearly misconveived. The question is whether it was of legal validity when considered vis-a-vis the proviso to the

P.T.O.

..at order of 15th April 1944. The latter permitted ..e D.M. to exempt from the operation of the Order sales in wholesale quantities made to licensed retailers by Government or licensed wholesalers only when the D. Ms. specifically prescribed special prices. As no special prices were prescribed by the D.M. it follows that all sale transactions were subject to the substantive portion of the Government Order and that the proviso to the Collector's order was therefore invalid."

Although both Provincial Government and the D.M. could pass orders under rule 81(2) of the Defence of India Rules fixing the prices of commodities, the D.M.'s order would be invalid in so far it is inconsistent with or contrary to the Probincial Government's Order. Considered in this light the proviso to the Order of the D.M., West Khandesh dated 18th May 1944 would be invalid, it being contrary to the Government's order dated 15th April 1944. But it appears that the Government's order dated 15th April 1944 was not duly published. If so, it may be contended that the Government's order had no legal effect and would not affect the D.M.'s order had in which case it would be difficult to hold that all sale transactions would be subject to the substantive portion of the Government's order. In the circumstance the alternative suggested in para. 2 of D.C.S's note at p. 59 appears desirable.

Sd/- D.V.Vyas

O.C. Remembrancer of Legal Affairs.

U.R. to C.S.D., No. 7692 , dated the 25th July 1947.

Mjr/16/5

4 C.

The question for consideration is whether the Ahmedabad Electricity Coy's claim for compensation for loss of revenue on account of delay in grant of war costs can be legally sustained.

P. 121 ante.

In the P.W.D. office note dated 18-11-1946, it is stated that "The delay complained of by the Electric Co/y. is with reference to the Coy's first request for the grant of war costs surcharge in March 1943, in respect of consumers under special contracts. The orders in the matter were issued in G.L. No 3053/36-E1, dated 10-12-1943. The delay was primar ly due to the time taken in examining the question xxxxxxxxxx in all its aspects etc." Under P.W.D. Order No3053/36, dated 8-12-1943 made under rule 81(2) of the D. of I. Rules, ~~xxxxxx~~ licensees using steam for generation of electricity were permitted to levy a surcharge on the amount charged for supply to consumers under special contracts, the amount of surcharge not exceeding 10 p.c. of the amount chargeable by the licensees. In purcuance of the said Order the levy of 10 p.c. surcharge by the Ahmedabad Electricity Coy. on the amount charged for the supply of electric energy to consumers under special contratts was permitted by Govt. in P.W.D. letter dated 10-12-1943 subject to the conditions mentioned in the said Order. In the absence of a legal authority conferred upon Govt, it could not allow the Coy. to levy surcharge on the amount charged for supply of energy. No sooner the P.W.D. Order No. 3053/36, dated 8-12-1943 was issued, Govt. by its letter dated 10-12-1943 accorded sanction to the Ahmedabad Electricity Coy. to levy 10 p.c. surcharge on the amount charged by them for the su-pply of energy to consumers under special contracts. Delay in issue of the Order under rule 81(2) is no ground for claiming compensation for loss in revenue. Section 17(2) of the Defence of India Act gives ample protection to Govt. against any legal

Pp.129-3. Do.

*p.149 of P.W.D. file 3053/36-II

P.T.O.

claim for damage caused by anything in good faith done in pursuance of the Act or rules made thereunder.

Sd/-
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A.L.R.

I agree Reply may be :-

The Company can have no legal calim against Govt. for compensation on the ground of delay in ~~xxxxx~~ sanctioning the levy of war costs. surcharge.

Sd/- K.T.Katarki
5/8

R.L.A.

Sd/- D.V. Vyas
1/8/

Mjr/16/5
4 C.

Office of the R.L.A.

The Company can have no legal claim against - Government for compensation on the ground of delay in sanctioning the levy of war costs surcharge.

Sd/- D.V.Vyas

O.C. Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 8367 dated the 14th August 1947

Mjr/16/5

4 C.

L.D.R.I. 9201 dt. 1-8-47

Submitted

§ Slip M in file o Rents/47.

2. Please see R.L.A's opinion No. 6169 dated the 14th June 1947. The Revenue Department has again referred the papers to the R.L.A. before replying to the applicant, Mr. L.P.Aranha, that his request to refer his application to arbitration cannot be granted, for advice

3. The present R.D. question is fully covered by the opening sentence in R.L.A. opinion No 6169 dated the 14th June 1947 . Since section 19 of the Defence of India Act has no application to the premises which were directed to be let out under clause (bb) of Rule 81(2) of the Defence of India Rules, the application cannot be referred to arbitration. The R.D. may be requested to follow the procedure explained in the R.L.A's opinion above referred.

§ -d.-

1-3 ante

Sd/-.T.Y.Chaudhari
408

A.A.S.

I agree that the present reference is unnecessary. If approved, reply may be :

Seen and returned.

The view expressed in paras 2 and 3 of R.D. Office note dated 29-7-1947 at pp. 29-30 ante is correct.

A.L.R.

Sd/- T.R.Kavarki
5/8

R.L.A.

Sd/- D.V.Vyas
11/8

U.R. to R.D. No. 8365 dated 14-8-1947

Mjr/16/5

4 C.

Submitted.

2. By Government Order in the Revenue Department No 10255/39. 655A, dated the 25th January 1946 issued under rule 81(2) of the Defence of India Rules Mr. Vivekanand Narayan Sambhoo the owner of Haryana Cottage No 1 and 9 Wilderness Road, Malbar Hill, Bombay was directed to let the said cottage to the Manager Government of India Estates, Bombay with effect from the date it was vacated by Mr. C. Twynam, the then tenant . Mr. V.N Sambhoo by his letter dated 30th January 1946 informed the Manager, Government of India Estates Bombay, that the said bunglow would be vacant on 1-3-1946 and that he had no objection to let to him provided he entered into an agreement with him. The Manager, Government of India Estates Bombay informed this Government in the Revenue Department, by his letter dated 7th March 1946 that possession of Narayan Cottage was taken on 1-3-1946. Mr. V.N. Sambhoo has through his advocate sent two letters dated 5th July 1947 and 10th September 1947 requesting the Manager, Government of India Estate Bombay among other things that the terms of the agreement be approved. It appears that the Manager, Government of India Estates did not give any reply to Mr. Sambhoo and the latter has by his letter dated 10th September 1947 to Govt complained that he has not received the terms of the agreement duly sig and confirmed and requests to "cancel the order of requisition if necessary compliance has not made by the Manager."

The R.D. considers that "by virtue of the order issued under rule 18 (2) of the D of I. Rules the State Manager has become the direct tenant of the landlord and it is not now necessary prescribed by the landlord." and proposes to . . .

inform the Advocate of the owne

However the papers are shown to the R.L.A. before issue of the reply.

3. The direction issued by Government in the Revenue Department to the landlord under clause (2) of rule 81 of the Defence of India Rules to let the Narayan Cottage to the Manager, Government of India Estates, Bombay would create the relationship of landlord and tenant. (cf. R.L.A's opinion No. 6169 dated 14th June 1947). The landlord seems to attach too much importance to his statement in his letter dated 30th January 1946 to the effect that "I have no objection to rent the bunglow to you provided that you (the Manager Government of India Estates) enter into agreement the copy of which I am enclosing herewith for your persual." Presumably he is under the impression that he allowed the Manager of Government of India Estates to taken possession on the assurance of execution of the said terms of tenancy. The direction to let was issued under rule 81 (2); and sub-clause (iii) thereof which empowers the Provincial Government to make order for requiring any accommodation to be let either generally or to specified persons did not admit of any terms by the landlord as insisted by him. All that rule 81(2) contemplates is an order directing the landlord to let the premises to the person named therein. Once the order is passed it would be competent for the landlord and tenant to settle the rent and other terms of tenancy by mutual agreement. (cf. R.L.A's opinion No 5433 dated 5-8-1946) In the interests of both the landlord and the Manager, Govt. of India Estates the agreement may be executed if that be acceptable to the latter.

Sd/- T.Y.Chaudhari.

A.A.S. 24/9

Mjr/16/5 4 0.

Office of the R.L.A.

Order Under rule 81(2(bb)
Defence of India Rules
and Transfer of Property
Act, 18/52.

By virtue of the order issued under rule 81(2) of the Defence of India Rules the relationship of landlord and tenant is created, which, in the absence of any agreement or local usage to the contrary, would be regulated by the provisions of section 108 of the Transfer of Property Act. Consequently it would not ordinarily be necessary for the Estate Manager to enter into any agreement with the landlord unless the Estate Manager has expressly or impliedly agreed to enter into such agreement, which may be verified. Once the order is passed, it would be for the landlord and tenants to settle the rent either by mutual agreement ka or under the Rent Restriction Act.

Sd/- F.M.Lad.
1/10

oc. Remembrancer of Legal Affairs.

U.H. to H.D., No9683 dated the 3rd October 1947.

Hjr/16/5
4 C.

Office of the R.L.A.

Letting of premises. Defence of India Rules, 1939.

With the expiry of the Defence of India Rules, 1939, Government's power to direct landlord to let his premises has lapsed. Consequently Government cannot compel a landlord to let his premises though vacant. The view taken by H.M. (L.S.G.) and H. M.(R). is correct.

Sd/. P.M.Lad
10/10

O.C.

Remembrancer of Legal Affairs.

Mjr/16/5

4 C.

R.L.No. 10751/dt 12-9-47
Office of the R.L.A.

Submitted

This case was referred to R.L.A. for advise on the points raised in Deputy Secy., H. and L.C.D's note dated 10-8-1947. As full facts were not available to express a definite opinion, the case was returned with a request to supply the necessary particulars (vide U.O. No 8520, dated the 22nd August 1947 at p. 27 ante) The case has now been returned with the information called for but from the subsequent papers received to-day it appears that Govt. in H. and L.C. Deptt. does not require R.L.A's opinion on the points raised (vide note at p.45 ante). In these circumstances the papers may be returned as desired by the H. and L.C.D. The accompanying memo. is for signature.

Sd/- M.P. Bege.
16/9

A.L.R.

Sd/- R.T.Katarki
16/9

Mjr/16/5
4 C.

Office of the H.L.A.

The papers are returned as desired by the Health and Local Government Department.

Sd/- N.T.Katarki.

O.C.
For Remembrancer of Legal Affairs.

U.O. to H. and L.G. Department, No 9261, dated the 17th September 1947

Mjr/16/5
4 C.

No.517/7874/Est.,
Civil Supplies Department,
Bombay Castle, 12th September 1947

From,

The Under Secretary to Government,
Civil Supplies Department, Bombay

To,

M.S.Koronha, Esq., B.A.LL.B.,
Advocate (O.S.) J.P.,
Chief Judge, Court of Small Causes,
Bombay..

Subject:- Lands & Buildings
Requisitioning of a roo-m adjoining the dispensary on the ground floor of Chawl No. 133, Hill Road, Bandra,
Reference to arbitration for fixing compensation.

Sir,

With reference to your letter No. 307/ dated 3rd September 1947, on the subject noted above, I am directed to state that Government is pleased to grant extention of time up to 31st December 1947 for making and publishing the award of arbitration in the matter.

Your obedient servant,

Sd/-

Under Secretary to Government, O.
Civil Supplies Department, Bombay.

Mjr/16/5

4 C.

OFFICE OF THE H.L.A.

As the matter has been finally decided by the Federal Court (See J.K.Gas Plant Manufacturing Co., Rampur Ltd. v. Emp. 49 Bom. L.R. 591) the decision of that Court and the decisions referred to there-in including that of the Bombay High Court (49 Bom. L.R. 352) should afford sufficient guidance. The C.S.D. need not circulate the Advocate General's opinion.

Sd/-
P.M.Lad.
10/9

cc.
Secretary of Legal Affairs.

L.R. to C.S.D. No. 9122 dated 11th September 1947

Rjr/16/5
4 C.

Submitted.

2. The R.D. Circular No. 2190/Extra 4513 dated 19-9-46 inter alia directed that in those cases where the requisition orders were issued in favour of the Central Govt. and the requisitions have been transferred to this Govt. the former orders should be cancelled and fresh requisition orders be issued in favour of this Government. In pursuance of this the Collr. of Bombay by his order No F.C.85, dated the 23-9-1946 requisitioned the premises on the fifth floor of the New India Assurance Building vacated by the Defence Department. It appears that the 4th and 5th floor of the New India Assurance Building were previously occupied by the Defence Department and after they were vacated by the Defence Department the 5th floor were occupied by the office of the D.C.S.(A) with effect from 10-10-1946 and 4th floor was occupied by the office of the Food Controller and the C.C.C.S with effect from 31st March 1946, (Please see C.S.D. note on p. 28 ante) The 4th floor of the said building was occupied by this Government's offices after the original requisition order dated 25-9-46 was amended by the Collr. of Bombay by a corrigendum No F.C. 85, dated 1.10-1946 so as to amend it to show that the 4th and 5th floors also are requisitioned .These papers are referred (p 31 ante) to the R.L.A. on the question whether the amendment is valid and to suggest steps if it is not valid.

The R.L.A. is requested to treat this case as <u>confidential</u>.

3. The original order No F.C.85, dated 25-9-46 issued by the Collr. of Bombay under rule 75-A(1) of the Defence of India Rules was intended to requisition only the 5th floor of the New India Assurance Building. The Defence of India Act. and the Rules made thereunder were to expire on

30-9-1946. Ordinance No. XX of 1946 which was promulgated on the 25-9-1946 provided for the continuation of certain provisions of the Defence of India Act and the Rules.But rule 75-A of the said Rules was not continued in force with the result that all requisitions then in force were solely governed by the provisions of the Requisitioned Land (Continuance of Powers) Ordinance, 1946 (Ordinance XIX of 1946) which was also promulgated on the 25-9-1947. This latter Ordinance however does not give any power for requisitioning. The Corrigendum dated 1-10-1946, issued by the Collr. of Bombay has the effect of requisitioning the 4th floor of the New India Assurance Building: (cf. R.L.A's opinion No 5152 dated 17-5-1947. But xxxx as on the day in question i.e. 1-10-1947 the said rule had expired no such order could validly be made. The corregendum is therefore illegal and ultra vires.

4. In the absence of any valid authority for occupation of the 4th floor of the aforesaid building Government's poisition will be that of a trespasser. The N.I. Assurance Co. in their letter dated 20-12-1946 complain, that the 4th and 5th floors of the Building were re-let by the Military Authorities to this Government without their consent or prior intimation and demand increased rent. The question of rent was under their consideration till their letter of 15th February 1947 and it appears even now it is not settled. From the correspondence also no contract for tenancy can be spelt out. In these circumstances it appears necessary that some sort of settlement with the company may be reached with regards t. rent and other terms of tenancy.

Sd/- C.Y.Chaudhari
27/11
A.A.G.

Resubmitted.
2. As instructed by A.A.G. informal.

NJr/16/5
A.C.

Defence of India Rules.

Validity of a Corrigendum requisitioning 4th floor of H.I.A Building.

The corrigendum issued by the Collector on 1st October 1946 is ineffective in so far as it includes the fourth floor. It is however presumed that that flour requisitioned for the Central Government has not still been derequisitioned. If so, the possession of that floor by this Government would be defensible.

Sd/- P.M.Lad.

O.C.
Remembrancer of Legal Affairs.

U.O. to C.S.D., No. 11893 dated the 10th December 1947

Mjr/16/5
4 C.

Submitted.

F.& S.D.900/46 Pp.55 & 62

2. By P.& S.D. Notification No 900 /46, dated 25th February 1947 and 28th February 1947, issued under rule 81-A(1) of the D. of I. Rules, as continued in force by Sec.2 of the Emergency Provisions (Continuance) Ordinance 1946(XX of 1946), Govt. of Bombay referred the dispute between the Empire of India Life Assurance Coy.Ltd. and its employees for adjudication, and appointed Sir Harshidhbhai Divatia, President of the Industrial Court, Bombay, to adjudicate the same. The Adjudicator has now forwarded a corrigendum to the award, amending para 21 of the thereof so as to include the name "Gaidar" among the employees included in the adjudication proceedings. P. & S.D. doubts whether the award can be amended in this manner and has raised the following questions for the consideration of the H.L.A.

Slip A below B.G.G. Part I Pg. 3414

(1) Whether the award once made can be amended, and if so.

(2) Whether this can be done by a corrigendum as proposed by the adjudicator and its publication by the Provincial Government in the same manner in which the award was published.

3. Questions Nos. (1) and (2)

At common law an arbitrator or umpire after he had made his award was functus officio, and had no power to correct even a mere clerical mistake. The power conferred by the statute is rigidly limited to mere clerical mistakes or errors arising from an accidental slip or omission (cf. Halsbury's Laws of England, Vol I. P. 648, see footnote (f). The same is the law in India. When an award has been made by an arbitrator, he is functus officio, his authority is finished, he has no power either to modify the award or to pass any fresh awar d in supersession of it (cf. Parshottamdas V Kekhushru 35 Bom L.R. 1101 at p 1104) He has no power to make an unauthorised addition to an award already made (23 All 333 P.C; 8 Bom L.R.311 P.C.).

P.T.O.

thenthe arbitrator has made and published his award as a completed instrument, his power is wholly at an end and he has no power to make any corrections or alterations therein. He is functus officio . He can make any alterations until the award is finally published (cf. Parukh's Arbitration Act. p. 63).

4. In the present case the award forwarded by the Adjudicator on 9-8-1947 and published in the Bom. Govt . Gazette on 16-8-47 was only an interim award. It was not published finally in the gazette. It also appears from the letter of the Registrar of the Industrial Court, adjudicatorxxxxx dated 2-9-1947, that the amendment nowproposed by the Adjudicator was only a typographical omission. In the circumstances, there appears no legal objection to amending the interim award by publishing a corrigendu, in the Gazette.

Sd/- P.N. Nadkarni
16/9/

A.A.S.

In exercise of the powers conferred by sub-rule (1) of rule 81A of the D of I Rules as continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946, Govt. referred for adjudication certain dispute between the Empire of India Life Assurance Coy. and its employees to Sir Haraidhbai V Divatia and directed that for the purpose of adjidicating the said trade dispute he shall exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930 He was also directed to specify to what class or classes of emplo ees his decision extended.

The powers of Courts and Boards specified in

Mjr/16/5

4 C.

Office of the R.L.A.

Alteration in the award in the dispute between the Empire of India Life Assurance Co. Ltd. and its employees.

D. of I. Rules, 81-A(1).

The corrigendum which has been issued by Sir Harchidhabhai appears to be to rectify a clerical omission and there appears no onjection to amending the award and to publishing the corrigendum.

Sd/- P.M.Lad
15/12

O.C. Remembrancer of Legal Affairs.

L.R. to F. & S.D. No., 12060 dated the ~~1st~~ 13th December 1947

Mjr/16/5
4 C.

Political and Services Department, Notification No. 6907/34-I, dated the 20th March 1947, issued under sub-rule (1) of rule 81A of the Defence of India Rules, as continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946, Government referred the dispute between the B.E.S.T. Company, Ltd., and its employees for arbitration to the Industrial Court and that Court h as now given its award. However, before the award was given, the undertaking of the B.E.S.T.Co., was taken over by the Bombay Municipality. The question referred to the H.L.A. for consideration is whether the award made by the Industrial Court can be made binding on the Municipality and its employees even though the Municipality was not brought on record during the pendency of thearbitration proceedings and, if so, what changes would be necessary in the form of the order at page 67 ante.

2. It appears from the P.& S.D. notification dated the 20th March 1947 that, for the purpose of adjudicating the said trade dispute, the Industrial Court, was empowered to exercise such powers as were confered on and to follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act, 1929 and the Bombay Trade Disputes Rules 1930. The powers conferred on a Board of Conciliation under the Trade Disputes Act, 1929, are such as are vested in the courts under the Code of Civil Procedure, 1908, when trying a suit in respect of certain matters. On the transfer of the undertaking of the B.E.S.T.Co., the Bombay Municipality could have been brought on record and the~~m~~ arbitration proceedings proceeded with. But no such step was taken either by the employees or by the B.E.S.T.Co., Clause 24 of the concession deed of 1905 between the Municipal Corporation of the City of Bombay and the Bombay Electric Supply and Tramways Co., Ltd.~~,~~ gave an option to the Corporation to purchase the combined undertaking with all lands, buildings, installations, plant, machinery, rails, rolling stock, mains apparatus, stores furniture and property of every description belonging to the B.E.S.T.Co., or held for the purpose of or in connection with the combined undertaking or any part thereof. It was in exercise of this option that the Bombay Municipality took over the undertaking of the B.E.S.T.Co. Section 14 (1) of the City of Bombay Municipal (Electric Supply and Transport) Act, 1947 provides for vesting of management and control of the undertaking in the Committee. Neither this provision nor clause 24 of the deed of concession provides that the transfer of the undertaking includes the transfer of

P.T.O.

the employees of the Company also. It is true that, if the property is transferred pendentelite, it would be deemed to be transfer/red subject to all its rights and liabilities and consequently a decree passed against the transferor of such property during the pendency of the litigation would be binding on the transferee, even though he is not made a party to the proceedings of the suit. But that principle will not apply in the present case, firstly because the transfer of the undertaking of the B.E.S.T.Co., does not include the transfer of its employees. Secondly because the municipality municipality did not presumbly take over the liability of the B.E.S.T. in respect of its employees. Consequently, the award award, to which the Bombay Municipality was not a party, would not be binding on it and it would not be competent for Government to make an order making it binding on the Municipality; for the proviso to sub-rule(1) of rule 81A of the Defence of India Rules, which provides for Government's power to make an order to enforce the award, does not contain a provision similar to section18'a) of the Industrial Disputes Act,1947. It appears, therefore, necessary that Government should try to persuade the Bombay Municipality to consent to the award so that Government may pass an order making it binding on the Municipality and the employees.

3. The second question raised for consideration of the R.L.A is whether the award can be made binding on all the 1,200 scheduled employees even though only 478 employees took part in the proceedings before the Industrial Court. This dispute was referred to adjudication under Rule 81A of the Defence of India Rules as continued in force by section 2 of the Emergency provisions (Continuance) Ordinance,1946. During the course of the hearing, Mr.Kolah, who appeared on behalf of the Company, pointed out that, out of the total number of 1,200 scheduled employees, only 478 filed their written statements through four employees and the General Secretary of the Scheduled Staff Union wrote to the Industrial Court that nobody was authorised to represent the members of the Union in the adjudication as the Union had decided not to take part in the proceedings and that, therefore, Mr.G.G.Mehta who appeared in the adjudication, represented only 478 employees and not the rest.On these facts it is contended that an award made in this adjudication should be binding only on those who were represented and not on others. The Adjudicator has, however, left it for Government to decide whether the award should be applied to only 478 employees or should be extended to those who were party to the adjudication but did not appear before him.

The dispute was referred under rule 81A(1)(C) of the Defence of India rules

Which provides for referring any trade dispute for conciliation or adjudication in the manner provided in the order. The order directed that the adjudicator shall, so far as may be, exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930; and that he should specify to what class or classes of employees his decisions extend. Section 14 of the Trade Disputes Act, 1929, lays down that subject to such conditions and restrictions as may be prescribed, any party to a dispute under inquiry or investigation by a court or Board shall be entitled to be represented before the court or Board by a legal practitioner, and rules 28 and 29 of the Bombay Trade Disputes Rules, 1930, say that any party to a reference may be represented before a court or Board by not more than three persons designated by him for the purpose and of whom one may be a legal practitioner, provided that the names of such persons shall have been communicated to the Chairman before the hearing, and that every party appearing by a representative shall be bound by the acts of such representative. All these are merely enabling provisions intended to lay down the manner in which a party should be represented before the Adjudicator. They have no bearing upon the question whether an award pronounced in the absence of anyparty-to take an extreme case-would be binding upon that party or not. Here the party was the scheduled employees, and some of the scheduled employees did appear through representatives. It was really the function of the Adjudicator in accordance with the concluding direction of the order to specify to what class of employees his decision shouldextend; and he shouldhave made it clear whether the decision should extend to all employees of the class "Scheduled employees". He was in the best position to know whether the abstaining employees had any useful contribution to make bearing upon the settlement of the dispute, and whether their absence has to that extent detracted from the conclusions he has reached. Upon the ordinary principles applicable to suits and awards, once a matter is referred to arbitration, even a party who abstains from taking part in the proceedings would be bound by the award. Under clause(d) of rule 81A(1) Government has the power of making an order for enforcing the decision of the authority to which a trade dispute has been referred. In the absence of any indication by the Adjudicator that his award should not bind the employees who were not represented before him, there would be no legal objection to enforcing the award even whole class of

Scheduled employees was a party to the award. I would, however suggest that the Adjudicator's attention should be drawn to the concluding direction of the order making the reference, and he may be invited to say in terms whether the award should bind the whole class of scheduled employees irrespective of the fact that some of them did not wish to appear before him.

Sd/- P.M.Lad.
15/12/

o.c.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 12070
dated the 15th December 1947.

Mjr/16/5
4 C.

Office of the R.L.A.

It is possible to take the view that sweepings of rationed articles are still rationed articles unless the foreign matter included therein is so disproportionately high as to submerge the rationed article itself and change its essential character.

Sd/- P.M.Lad.
18/12

C.C.

Remembrancer of Legal Affairs.

U.H. to the C. of R. No. 13103 dated the 16th December 1947

Mjr/16/5

4 C.

submitted.

2. It appears that Rao Saheb M.S. Antani Retired Executive Engr. Surat, was asked to attend on 1-11-1946, the court of the Arbitrator as a defence witness in the Arbitration proceedings in respect of the requisitioned property known as Vasant Mills at Broach. The Rao Saheb has claimed Rs.154-14-0 (Rs.150/- as engineers fees and Rs.4-14-0 for II Class Rly. fares from Surat to Broach) as fees for one day and travelling allowance. The D.M. Broach in his letter at p.3 ante states that neither he nor the Treasury Officer, Broach, and the Executive Engineer, Surat and Broach Gamx Division are able to trace any authority for the claim for the claim for Rs.15/-. The Commr. however in his endorsement requests that the payment may be sanctioned. The F.D. to whom the papers were forwarded by the P.W.D. states that

"It is not clear from these papers whether the Arbitration Court, is the same or similar to say District Court with regard to power to summon witnesses. If so it is not understood how Government is concerned with the payment of t.a. to a defence witness called upon to attend such a Court".

The R.D. who has issued orders in the Arbitration proceedings in G.R.E.D. No.1491/45 dated 18th January 1946, has forwarded the papers to the R.L.A. on the point raised by the F.D.

3. The point for consideration of the R.L.A. is whether defence witness (Rao Saheb Antani) before the Arbitrator appointed to settle compensation payable in respect of requisitioned land is entitled to a t.a. and his fees.

Rule 13 of the Rules framed by this Government under section 19 of the Defence of India Act, 1939, and published in G.N. R.D.No.7/20/39, dated 21st July 1943, lays down that:

"Save as otherwise provided in the foregoing rules or in section 19 of the said Act the procedure to be followed in arbitrations under these rules shall be in accordace so far as may be with the provisions of clauses (a)and (c) to (e) of section 13, subsection (1) of section 14, section 27, sub-section(1) of section 28, clauses(a) and (c) of sec.30, clause (e) of section 41, section 42 and section 43 of the Arbitration Act, 1940;

Provided that in cl.(e of sec 41 and where it occurs for the first time in sub-sec.(1) of sec. 43 shall be constructed as reference to arbitrator etc.

Neither section 19 of the Defence of India Act, nor the said rules provide for payment of travelling allowance or any fees to witnesses.
Section 41(a) of the Arbitration Act, 1940, provides that subject to the provisions of that Act and the rules made thereunder the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court and to all appeals under this Act. Consequently the relevant provisions of the C.P.C. would ap ly to the proceedings before the Arbitrator. Order XVI Rule 2(1)of the first Schedule thereof provides that, the party a-pplying for summons shall within the period fixed pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the court in which he is required to attend and for one day's attendence. Sub-rule (2) empowers the court to allow resonable remmuneration in the case of a person summoned to give evidence as an expert. It is not known whether the Rao Saheb attended as an expert or because he had knowledge of the proceedings underlying the requisition in his capacity as an executive engineer. He was retired on the date in questioni.e. 1-11-1946. The proceedings before an arbitrator would probably fall under rule 536 of the Bombay Civil Services Rules and if he has been called in view of his being a Govt. servant, he is eligible only to such t.a. as the arbitrator might have granted and the other allowances, including the fees in question would have to be credited to Govt. (pl see High Court Civil Circular No 62)
But if he be called as an expert the case would not be covered either under rule 536 or 542 and he would be entitled to such fees as the Arbitrator might grant under the provisions of Order XVI rules 2(2) of the First Schedule to the C.P.C. But since no such order has been made by the Aroitrator in the present case the remedy open to the Rao Saheb to approach the Arbitrator. If however the office of the Arbitrator appointed under G.R.R.D. No 1491/45m dated 18-1-1946 has been abolished Government would have the power to grant the necessary allowances and fees.
Sd/- T.Y. Chaudhari

Pjr/16/5
4 C.

T e Defence of India /ct.
R ules made under Section 19 (2)(3) Travelling allowance for attending the Arbitrator's Court.

By virtue of rule 13 of the Rules framed by Government under section 19(2) and (3) of the Defence of India Act, 1939 the arbitrator appointed to determine compensation in respect of the requisitioned premises would exercise the powers of a Civil Court under the Code of Civil Procedure for issuing processes to the parties and witnesses. Consequently Rao Saheb Antani would be entitled to the travelling allowance for attending the arbitrator's Court. He can also claim remuneration if he had been called to give evidence as an expert (see Order XVI rule 2(2) Civil Procedure Code).

Sd/- P.H.Lad.

o.c.

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 13489 , dated the 30th December 1947

Mjr/16/5

4 C.